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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 611 (AJN)

5 BENJAMIN WEY,

6 Defendant.

7 -----x

8 New York, N.Y.
9 January 23, 2017
10:10 a.m.

10 Before:

11 HON. ALISON J. NATHAN,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

MICHAEL FERRARA

17 AIMEE HECTOR

18 IAN P. MCGINLEY

Assistant United States Attorneys

19 HAYNES AND BOONE, LLP

Attorneys for Defendant

20 DAVID M. SIEGAL

21 JOSEPH C. LAWLOR

BARRY McNEIL

SARAH E. JACOBSON

H1NMWEY1

(Case called)

MR. FERRARA: Good morning, your Honor, for the government, Michael Ferrara, Aimee Hector and Ian McGinley. We are also joined by paralegal specialist, Sarah Emmerich.

MR. SIEGAL: Good morning, your Honor, David Siegal, Joseph Lawlor, and Barry McNeil appearing at counsel table. Sarah Jacobson is back in the gallery and my client, Benjamin Wey, is sitting at counsel table.

THE COURT: Good morning.

We are here on Mr. Wey's motion to suppress following the parties' briefing on the matter. I ordered this hearing to address the question of good faith.

I am comfortable proceeding straight into testimony, if that's what counsel wishes, or if you would like to make an opening statement of some kind, you may do so.

MR. FERRARA: Your Honor, actually sort of dovetails one thing we wanted to mention before, which is, I think the point is, we are happy to just jump right into the witnesses because we do think it's going to be a full day and likely will bleed into a second day. We wanted to alert your Honor to that in terms of scheduling.

THE COURT: I have two days available for it.

MR. FERRARA: Is that tomorrow, just for our witnesses purposes?

THE COURT: Yes, it is tomorrow. Which doesn't mean

H1NMWEY1

1 we won't move efficiently, but I have the time. In looking at
2 the witness list that was submitted, I presume we might need a
3 second day.

4 MR. SIEGAL: There is one other point I think, your
5 Honor, which is, it may be that one of the witnesses we asked
6 be made available is not available tomorrow. I think we should
7 just deal with that as the day goes along.

8 THE COURT: You have someone who is here today who
9 will not be available tomorrow.

10 MR. FERRARA: One of the special agents is available
11 today, but not tomorrow. It's one of the agents that Mr.
12 Siegal would like to call.

13 THE COURT: Have you discussed ordering to ensure that
14 we get that testimony today?

15 MR. SIEGAL: Part of our thought process here, your
16 Honor, is that we may decide not to call him, depending on what
17 happens in the other testimony. It wouldn't be my inclination
18 to take him out of order. I think we should make that decision
19 later in the day when we have a better sense of what the
20 evidence looks like.

21 THE COURT: But recognizing at some point it's fish or
22 cut bait. Given that it sounds like he might not be here
23 tomorrow, you just need to make a decision in time today to
24 take his testimony.

25 MR. SIEGAL: OK, your Honor.

H1NMWEY1

Massey - direct

1 THE COURT: Thank you.

2 MR. FERRARA: The government calls David Massey.

3 THE COURT: Mr. Massey may come forward.

4 MR. FERRARA: I am going to grab him from outside,
5 your Honor.

6 THE COURT: Thank you.

7 DAVID MASSEY,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. FERRARA:

12 Q. Good morning, Mr. Massey.

13 A. Good morning.

14 Q. Where do you work?

15 A. Richards Kibbe & Orbe.

16 Q. You're a lawyer?

17 A. Yes.

18 Q. I want to call your attention to January 2012. Where did
19 you work then?

20 A. U.S. Attorney's Office, Southern District of New York.

21 Q. When did you first start as an Assistant U.S. Attorney?

22 A. November of 2004.

23 Q. When did you leave that office?

24 A. November of 2013.

25 Q. To what unit were you assigned in late 2011 and early 2012?

H1NMWEY1

Massey - direct

1 A. Securities and commodities fraud task force.

2 Q. How long had you been an AUSA in the securities and
3 commodities fraud task force as of January 2012?

4 A. Hard to remember. I think around a year.

5 Q. To the extent it's not obvious from the name, what sorts of
6 cases does that task force focus on?

7 A. Securities commodities fraud, mail wire fraud, all sorts of
8 financial fraud.

9 Q. Again, in this time period, late 2011, early 2012, were you
10 working on an investigation involving Ben Wey and New York
11 Global Group, among others?

12 A. Yes, I was.

13 Q. You have a binder next to you with some exhibits in them,
14 some things marked as exhibits. I would ask you to take a look
15 at what's been marked as Government Exhibits 2 and 3.

16 A. OK.

17 Q. What are those?

18 A. Government Exhibit 2 is the application for a search
19 warrant for the office of New York Global Group. Government
20 Exhibit 3 is the warrant, including attachments for the search
21 of the office of New York Global Group.

22 MR. FERRARA: Your Honor, the government offers
23 Exhibits 2 and 3.

24 MR. SIEGAL: No objection.

25 THE COURT: Without objection, Government's 2 and 3

H1NMWEY1

Massey - direct

1 are admitted.

2 (Government Exhibits 2 and 3 received in evidence)

3 Q. Who took the lead in drafting those documents?

4 A. I did.

5 Q. Let's start with Exhibit 2, the affidavit. Could you
6 describe for us the process that went into drafting that
7 affidavit?

8 A. Well.

9 THE COURT: You're directing him to what begins on the
10 second page of the exhibit?

11 MR. FERRARA: Yes, your Honor. I think of it as one
12 document, but I think that's right to talk about the affidavit.
13 I think of the application as sort of the first page, but, yes,
14 that's accurate.

15 A. The process was one of collecting all the information that
16 had been assembled in the investigation from grand jury
17 subpoenas, information supplied by the SEC, interviews of
18 witnesses, information provided by the FBI, and all sorts of
19 other information. From that information I sat in my office
20 and wrote the initial drafts and revised drafts of a lengthy
21 affidavit.

22 Q. Does the affidavit include all of the information you had
23 in the investigation at that point?

24 A. No.

25 Q. I want to ask you a few questions about the affidavit.

H1NMWEY1

Massey - direct

1 Let's first turn to page 19 of Exhibit 2.

2 A. OK.

3 Q. Were you there?

4 A. Almost. Yes.

5 Q. The affidavit spends some time discussing Mr. Wey's
6 transferring of shares to meet the NASDAQ's listing requirement
7 of 100 round lot shareholders. Do you recall that?

8 A. Yes.

9 Q. Anywhere in the affidavit does it allege that NASDAQ's
10 rules forbid gifting shares to meet that listing requirement?

11 A. Not as I recall.

12 Q. What was the import of the affidavit's discussion of Mr.
13 Wey's distributing shares to meet the listing requirement?

14 A. Well, it was one of many indicia of fraud, which had been
15 noticed by the SEC in the China Energy case, which is described
16 in the affidavit. There is a NASDAQ rule -- was then the
17 NASDAQ rule for round lot shareholders to have a certain
18 threshold of round lot shareholders, round lot being a hundred
19 shareholders.

20 And the basic idea is that through a process that's
21 described at length in the affidavit with respect to a number
22 of issuers it was clear that New York Global Group and/or Ben
23 Wey or somebody operating at the premises had engaged in a sham
24 process to sort of make it appear as though there was a large
25 number of people with genuine trading interests in the stock

H1NMWEY1

Massey - direct

1 when in fact it was an individual or individuals controlling a
2 process of distribution of stock kind of again and again,
3 spinning out shareholders for the purpose of making it appear
4 that there was a larger investor base than there actually was.

5 Q. Let's turn to page 43 of the affidavit. Looking at
6 paragraph 25.

7 A. OK.

8 Q. What does that paragraph describe?

9 A. This paragraph describes -- just give me one second, if you
10 would.

11 Q. Take your time, sir.

12 A. This describes the rapid rise in price of two issuers,
13 SmartHeat and Deer.

14 Q. I think that paragraph describes a significant rise in the
15 price of that stock?

16 A. Yes.

17 Q. Were you aware of other information that could have
18 explained the significant increase in the share price other
19 than aggressive buying activity by the Scholander and Harris
20 brokers?

21 A. I was not aware of any other public information that could
22 describe such a significant and rapid increase in the share
23 price.

24 Q. Turning to the next page, does the affidavit describe the
25 buying activity as at least a part of the increase in the share

H1NMWEY1

Massey - direct

1 price?

2 A. Yes.

3 Q. Let's turn to page 12, the bottom of page 12, paragraph 14.

4 MR. SIEGAL: I'm sorry. Where are we?

5 MR. FERRARA: Page 12 of Exhibit 2, still Exhibit 2.

6 THE COURT: Just for clarity of record, you mean page
7 12 of the affidavit contained in Exhibit 2?

8 MR. FERRARA: Yes, your Honor. Thank you.

9 Q. If everyone is there, paragraph 14 reads, in part: As
10 described in more detail below, one of Wey's nominees, Tianyi
11 Wey, has transferred large sums of money to Wey's wife,
12 Michaela Wey, including wire transfers that were divided into
13 increments less than \$10,000 to avoid raising suspicion. I'll
14 stop there. Let's turn in that same affidavit to page 57.

15 A. OK. I'm there.

16 Q. And this little I subparagraph on 57 reads, in part: HSBC
17 New York bank records also show other transfers from Tianyi Wey
18 to the Michaela Wey account at HSBC New York that were
19 deliberately broken into increments less than \$10,000 to avoid
20 raising suspicion, given the United States currency transaction
21 reporting requirements with respect to cash transactions over
22 \$10,000.

23 Did I read that right?

24 A. Yes.

25 Q. Were you aware, when you drafted this affidavit, that the

H1NMWEY1

Massey - direct

1 currency transaction reporting requirements with respect to
2 transactions over \$10,000 did not apply to wire transfers?

3 A. Yes.

4 Q. What is the import of those parts of those two paragraphs I
5 just read?

6 A. Well, it makes clear that the CTR requirement applies to
7 cash, physical currency transactions. What it's meant to
8 convey is just another indicia of fraud which I had seen and
9 was sort of commonly known in cross-border fraud settings
10 whereby people who are transferring large sums of money into or
11 out of the United States would break the amounts into smaller
12 amounts to reduce scrutiny on the transactions. And for some
13 reason, and I suppose it's because there is the CTR requirement
14 for cash at the level of 10,000, people appear to believe that
15 if they make the transactions less than \$10,000 they will get
16 less scrutiny by the banks or by the government.

17 Q. Let's turn to page 74 of the affidavit, paragraph 36. This
18 paragraph I believe discusses the NASDAQ's decision to delist
19 Cleantech. Is that right?

20 A. Yes.

21 Q. Do you know whether the NASDAQ's decision was ultimately
22 overturned by the SEC?

23 A. As I sit here now, I understand it was overturned.

24 Q. At the time you were involved in drafting the affidavit,
25 did you have information suggesting whether the SEC would

H1NMWEY1

Massey - direct

1 ultimately overturn the delisting decision?

2 A. Not that I recall.

3 Q. My last question about the affidavit in Government Exhibit
4 2 is at page 56 and this is footnote 8.

5 A. I see it.

6 Q. There is a reference in the footnote to Ms. Wey, Tianyi, An
7 Bei Lu. Do you see that?

8 A. Yes.

9 Q. Am I right that the footnote suggests that's a reference to
10 one of the founders of Cleantech's China-based operating
11 company?

12 A. Yes.

13 Q. Do you believe that suggestion is still correct?

14 A. As I sit here now, I have learned that Bei Lu is a street
15 name or also a street name in addition to being the name of one
16 of the founders of Cleantech.

17 Q. Did you believe the suggestion was correct at the time you
18 drafted the affidavit?

19 A. Yes.

20 Q. Let's flip to Government Exhibit 3, which is the NYGG
21 warrant.

22 A. I have it.

23 THE COURT: My binder doesn't have the warrant. I
24 take it back. It does.

25 Q. Do the statute citations to the crimes under investigation

H1NMWEY1

Massey - direct

1 appear on the face of the warrant or its attachments?

2 A. Not that I see.

3 Q. Nonetheless, was it clear to you, based on the warrant and
4 its attachments, what crimes were being investigated?

5 A. Absolutely.

6 Q. Why is that?

7 A. Well, it's based on the face of the warrant. Exhibit A,
8 paragraphs starting with paragraph 1, the first types of
9 records that are called for are financial records concerning
10 various individuals, including banking and brokerage firm
11 account statements and the like. In addition, paragraphs 1 and
12 2 for starters are all about financial transaction records,
13 records of shareholders. That certainly indicates a financial
14 or securities fraud as opposed to narcotics or assistance to
15 terrorism or something like that.

16 Q. Based on the affidavit, why did you believe a warrant of
17 this breadth was justified?

18 A. Because as described in the warrant, Ben Wey --

19 Q. You mean as described in the affidavit?

20 A. Yes. As described in the affidavit. Do I mean to describe
21 it based on the warrant or based on the affidavit?

22 Q. My question was, based on what's in the affidavit, why did
23 you believe a warrant calling for this breadth of records
24 wasn't that justified?

25 A. In short, I thought there was a high probability that

H1NMWEY1

Massey - direct

1 subpoenas to New York Global Group and related entities would
2 not yield all of the relevant evidence of crime. I thought
3 evidence would be withheld and/or evidence would be destroyed.

4 Q. So that answers the question of why a warrant versus some
5 other type of process?

6 A. Yes.

7 Q. Now another question is, why did you believe it was
8 appropriate to seize this breadth of records that is in the
9 attachments to the warrant?

10 A. Well, it was clear from what's described in the warrant
11 that the economic business activity of Ben Wey's operations
12 going back to the early 2000s and everything about New York
13 Global Group that I had observed and the FBI had observed
14 through a time-consuming investigation was that it was
15 essentially permeated by fraud, that each issuer that it had
16 advised had some kind -- had significant indicia of securities
17 fraud or other fraud, starting with Bodisen Biotech, which had
18 been delisted for failure to disclose its relationship to Ben
19 Wey's entity. He had been barred from the securities industry
20 in Oklahoma. Each issuer followed the same pattern.

21 And the way securities fraud and sort of market
22 manipulation schemes tend to work is, there is sort of a
23 playbook and it's sort of a factory. There is a beginning,
24 middle, and end. The playbook was being repeated issuer after
25 issuer.

H1NMWEY1

Massey - direct

1 In addition, that showed that the fraud permeated the
2 organization. In addition, there was a claim by Ben Wey and/or
3 his agents that his only income came from the U.S. company New
4 York Global Group USA and that New York Global Group USA's only
5 income or revenue came from its co-branded Chinese affiliate,
6 New York Global Group Asia. That seemed completely
7 implausible, given the amount of money that we know that Ben
8 Wey was sort of generating from these schemes. And so all the
9 records of New York Global Group, including revenue, expenses
10 and the like were in play.

11 Q. Let's switch gears and talk about the preparation for the
12 search itself. I guess I want to ask you, based on the nature
13 of this case in particular, what was your thinking of how to
14 prepare the agents for this particular search? How did you
15 approach how you were going to help them prepare?

16 A. Well, with the lead agent, the lead agent, Matt Komar, was
17 well versed in the details because he sat in my office and read
18 it, edited it and gave suggestions on it and ultimately
19 coauthored it, signed it. That was how he understood it, and
20 he was participating in the investigation with me day to day.

21 As far as the other agents go, there was a group of
22 other agents from that squad that were participating. And I
23 believe the way I thought about it was to think of it sort of
24 like a wiretap. I have a recollection of thinking that the
25 affidavit was lengthy. The agents certainly needed to

H1NMWEY1

Massey - direct

1 understand it at a certain level, at least at a very broad
2 level, and that sort of like a wiretap where the process is one
3 where an AUSA will brief the agents who are participating in
4 the wiretap by telephone or in person, I thought it made sense
5 to do something similar here, period.

6 Q. And so what, if any, meetings did you participate in in
7 order to prepare the agents in that way?

8 A. I have a vague recollection of going over to 26 Federal
9 Plaza, to the FBI's offices, and talking and meeting with some
10 or all of the agents who were going to participate in this
11 search, probably also including the supervisor. I can't recall
12 who all was there. Certainly Matt Komar was there. And sort
13 of talking them through the affidavit and the investigation and
14 what they were looking for.

15 Q. Does your recollection include when that was in relation to
16 the search itself?

17 A. It doesn't because I don't have -- I can tell you based on
18 practice. The practice would have been to do it very close in
19 time to the search.

20 Q. You mentioned that some of the other agents participating
21 were all in the same squad. What sorts of crimes did that
22 squad focus on?

23 A. Securities fraud.

24 Q. At any point during that meeting you just described did you
25 get the impression, based on what you were seeing or hearing,

H1NMWEY1

Massey - direct

1 that any of the agents of the search team did not understand
2 the crimes that were being investigated?

3 A. No.

4 Q. Were you present for the search of NYGG?

5 A. No.

6 Q. Were you communicating with agents during that search?

7 A. With at least Agent Komar and possibly also his supervisor,
8 Agent Pisano.

9 Q. At any point, based on what you were hearing from Agent
10 Komar, any other agent you may have communicated with, did you
11 ever worry or have any concern that the agents did not
12 understand what they were permitted to seize from the offices
13 of NYGG?

14 A. No, I didn't.

15 Q. At some point did you learn there might be another location
16 for which a search was warranted?

17 A. Yes, I did.

18 Q. What happened?

19 A. So one of the agents, probably Agent Komar, called or
20 e-mailed to say that one of the employees of New York Global
21 Group had reported that Michaela Wey, who I knew to be Ben
22 Wey's wife and who was at least on paper the nominal owner of
23 the USA entity that was being searched, was not only an
24 employee, but also the bookkeeper and did the bookkeeping from
25 their apartment.

H1NMWEY1

Massey - direct

1 Q. What did you do in response to that information?

2 A. I asked one of the agents or an agent to come over to my
3 office so that a follow-on search warrant for the apartment
4 could be drafted.

5 Q. Let's take a look at what had been marked as Government
6 Exhibits 9 and 10.

7 A. I see 9 and 10.

8 Q. What are those?

9 A. Government Exhibit 9 is the application for the search
10 warrant of the apartment. Government Exhibit 10 is the warrant
11 for the search of the apartment.

12 MR. FERRARA: Your Honor, the government offers
13 Exhibits 9 and 10.

14 THE COURT: 9 and 10 are admitted.

15 (Government Exhibits 9 and 10 received in evidence)

16 MR. SIEGAL: No objection.

17 Q. Who took the lead in drafting those documents?

18 A. I did.

19 Q. Let's turn to Exhibit 10.

20 A. OK.

21 Q. Same question that I asked earlier. Do the statute
22 citations to the crimes under investigation appear on the face
23 of that warrant or in its attachments?

24 A. Not that I see.

25 Q. Nonetheless, was it clear to you, based on the warrant and

H1NMWEY1

Massey - direct

1 its attachments, what crimes were being investigated?

2 A. Yes.

3 Q. And if I asked you why, would it be a similar answer as you
4 gave earlier?

5 A. Yes.

6 Q. Why in this particular case, why was did you believe that
7 the warrant justified this breadth of documents as to the
8 residence?

9 A. Well, Michaela Wey, the nominal or actual, didn't know
10 which, owner of New York Global Group, and the husband of the
11 chief executive officer of New York Global Group, was doing the
12 bookkeeping for a complicated entity from the apartment. So
13 any or all financial records relating to New York Global Group,
14 at a minimum, would be within the scope, validly within the
15 scope of a search warrant because there is probable cause to
16 believe that any of those records could be evidence of a crime.

17 In addition, it was clear that there is a direct
18 connection between the personal finances of Michaela Wey, who
19 lived at that apartment, and Ben Wey; a nominee shareholder
20 named Tianyi Wey, the sister of Ben Wey. The proceeds of the
21 crime were -- appeared to be coming from offshore back into the
22 U.S. and at least some cases in the form of wire transfers from
23 Tianyi Wey to Michaela Wey and into one or more accounts that
24 were used to pay personal expenses or credit cards.

25 And I think also there was a post office box that we

H1NMWEY1

Massey - direct

1 knew to be used to receive brokerage statements that were, I
2 think, in the name of Michaela Wey or another -- I think
3 Michaela Wey or maybe Ben Wey. And we knew, just from a Google
4 search, that that post office box facility was very close to
5 the apartment. That led us to believe, and I think it's in the
6 warrants, that that was a place to go get documents and
7 presumably bring them back to the apartment.

8 And there was yet another -- there was additional
9 evidence that stock certificates that were part of the round
10 lot sort of shareholder scheme that I described earlier, and
11 that is in the affidavit, where some of those stock
12 certificates were sent to and/or from the apartment.

13 Q. Were you present for the search of the residence?

14 A. No, I was not.

15 Q. Were agents calling or e-mailing you during that search?

16 A. Yes.

17 Q. At any point, based on what you were hearing from the
18 agents, did you ever worry or have any concern that the agents
19 did not understand what the warrant permitted them to seize
20 from the residence?

21 A. No.

22 Q. According to the agents, and perhaps your conversations
23 with others, who was present at the residence other than FBI
24 personnel?

25 A. I believe at least at the beginning Michaela Wey was

H1NMWEY1

Massey - direct

1 present. I believe a lawyer named John Bostany was present at
2 one point.

3 Q. Did you speak to Mr. Bostany during the search?

4 A. I believe I did.

5 Q. About what?

6 A. Initially about whether he represented or who he
7 represented. He also raised the question of privileged
8 documents being at the residence.

9 Q. What was the resolution of the issue of privileged
10 documents being at the residence or potentially privileged
11 documents being as at the residence?

12 A. The resolution, as I recall it, in part, through refreshing
13 recollection by e-mail, is that he was permitted to designate
14 or he and/or she, Michaela Wey, were permitted to identify
15 certain folders or boxes that contained potentially privileged
16 information, and I believe he was allowed to take them away.
17 And I think the purported basis for privilege is that Michaela
18 Wey, who as a lawyer had represented Ben Wey in connection with
19 his Oklahoma securities proceeding.

20 Q. Let's talk about the handling of the electronic evidence
21 after the searches were complete. OK?

22 A. OK.

23 Q. First, what happened to the electronic evidence after it
24 was seized, to the extent you know?

25 A. It was taken by the FBI and then I believe provided to

H1NMWEY1

Massey - direct

1 CART, which is the computer forensics arm of the FBI. The
2 first thing that happened is that copies were made of some or
3 all of the electronic storage devices, thumb drives, hard
4 drives and the like, because either Mr. Siegal or Seth Levine,
5 who represented New York Global Group, or both, told me
6 relatively quickly that they needed it back in order to perform
7 the continuing operations of New York Global Group. And they
8 retained Stroz Friedberg who help with that process. So I
9 asked the FBI to make copies of the electronic storage devices
10 and return either the original or a copy to New York Global
11 Group through Stroz Friedberg.

12 Q. I'm sorry. Why was that important to them to get those
13 back?

14 A. Because they said that, you know, some or all of the
15 computers and electronic storage devices had been taken, and
16 they needed to resume business operations. To respect their
17 need to be back in business, we gave them back copies or the
18 actual original devices.

19 Q. What was the next step after CART imaged, made copies and
20 then certain things were returned? What was the next step in
21 the process?

22 A. CART had to process the information and put it onto their
23 platform in short.

24 Q. Why did that need to happen? This is basic stuff.

25 A. Sort of forensic, you know, purity. The FBI needed to

H1NMWEY1

Massey - direct

1 handle the data and handle the search process of the data so
2 that they could call a witness to offer the data into evidence
3 at the appropriate time. But it just had to be properly
4 safeguarded and controlled and put onto a platform. It both
5 had to be safeguarded and put on a platform in which it could
6 be searched.

7 Q. What is CART?

8 A. I think it stands for computer -- I don't know. I don't
9 remember the acronym.

10 Q. Generally, what is it?

11 A. It's the computer forensics squad of the FBI.

12 Q. After CART processed the documents or the electronic
13 evidence in the way you described, were you then able to begin
14 reviewing the documents or the electronic evidence?

15 A. Not right away.

16 Q. Why not?

17 A. Well, a couple of things had to happen. And one was,
18 privilege review. We knew that New York Global Group and/or
19 Ben Wey and Michaela Wey had or believed, had a good-faith
20 basis to believe they had legal representation at various
21 points. And at some point in the investigation I began
22 collecting a list of lawyers' names and e-mail addresses who
23 might have represented one or more of Ben Wey, Michaela Wey or
24 New York Global Group. In addition I got lists from either
25 David Siegal, certainly also from Seth Levine, counsel for New

H1NMWEY1

Massey - direct

1 York Global Group, one or more lists from Seth Levine that
2 purported to list law firms or individual lawyers who had
3 represented one or more of the above.

4 Q. Let's take a look at what's been marked as Government
5 Exhibit 17 and 18.

6 A. I see 17, the list. 18. Yes.

7 Q. Let's take them in order. What is 17?

8 A. 17 is a letter from Seth Levine, counsel to New York Global
9 Group to me, including a list of counsel for New York Global
10 Group, Benjamin and/or Michaela Wey.

11 Q. What is 18?

12 A. 18 is one of the lists. It might be -- certainly a revised
13 list, revised August 7, 2012. I can't tell if it was the last
14 one. But it's the list that I generated over time of lawyers
15 whose names we had identified as counsel to various entities,
16 not just Ben Wey and Michaela Wey, but also to the issuers.

17 Q. I don't want to cut you off.

18 A. That's it.

19 MR. FERRARA: Your Honor, the government offers
20 Exhibits 17 and 18.

21 MR. SIEGAL: No objection.

22 THE COURT: Government's 17 and 18 are admitted.

23 (Government Exhibits 17 and 18 received in evidence)

24 Q. What is the date of the letter from Mr. Levine to you,
25 Government 17?

H1NMWEY1

Massey - direct

1 A. June 4, 2012.

2 Q. Now, were you focused on the pace at which the review of
3 the electronic evidence was occurring?

4 A. Yes, I was.

5 Q. Why?

6 A. Well, because I wanted -- various reasons, including, it
7 was important to move forward with the investigation. Also, I
8 was aware of an opinion by Judge Irizarry and just the law in
9 general involving searching of electronic information. Judge
10 Irizarry's opinion, I thought it was very distinguishable, but
11 it was very clear it was important for agents and prosecutors
12 to continue moving forward when they obtained electronically
13 stored data toward the search and use of that data.

14 Q. Who was taking the lead in the privilege review? Was it
15 the FBI, the U.S. Attorney's Office, or was it sort of both
16 jointly?

17 A. It was really the FBI, but I was involved and aware of what
18 was happening. We set up a wall team or wall AUSA, and I think
19 also paralegal at the U.S. Attorney's Office and there was a
20 wall team at the FBI to conduct searches. But the -- most of
21 the work was happening at the FBI.

22 Q. What was the next step after the privilege review was
23 complete? Sorry. Let me actually back up and withdraw that
24 question briefly.

25 If you can remember, was the privilege review, to your

H1NMWEY1

Massey - direct

1 mind, done all at once on a certain date or do you remember
2 receiving sort of safe, unprivileged documents on a rolling
3 basis, if you recall?

4 A. I believe I recall receiving certain documents on a rolling
5 basis, including spreadsheets that were clearly not privileged
6 because no lawyer's name had been found in them, or at least if
7 a lawyer's name had been found, we understood it was not a
8 lawyer who represented Ben Wey, Michaela Wey, or New York
9 Global Group. The spreadsheet was quickly reviewed by an agent
10 to see if it contained information about one of the issuers,
11 for example. It was plainly within the scope of the warrant.
12 I believe I got access to spreadsheets like that earlier than
13 other information.

14 Q. What was the next step after the privilege review was
15 complete or as it was being completed on a rolling basis?

16 A. The next step was to search it for pertinence, sort of
17 responsiveness to the search warrant application and the
18 warrant itself. And so that involved preparing a list of
19 search terms which I believe I took the lead on, to give to the
20 FBI so they could run searches through the data. There is a
21 lot of data. And the best way to do it was through searches so
22 they caused run searches against the data to identify data that
23 was clearly within the scope of the warrant.

24 Q. Take a look at Government Exhibit 19.

25 A. OK.

H1NMWEY1

Massey - direct

1 Q. What is that?

2 A. That appears to be a list of search terms. I don't know if
3 it's the final list that I believe I prepared based on the
4 search warrant application and based on additional information
5 that sort of further described individuals or entities listed
6 in this search warrant application or the warrant itself.

7 MR. SIEGAL: I'm sorry. Could I have that answer read
8 back, please.

9 THE COURT: Go ahead.

10 (Record read)

11 MR. FERRARA: Your Honor, the government offers
12 Exhibit 19.

13 THE COURT: Without objection, 19 is admitted.

14 MR. SIEGAL: No objection, your Honor.

15 THE COURT: Government 19 admitted.

16 (Government Exhibit 19 received in evidence)

17 Q. How did you come up with those search terms?

18 A. I believe I started from the list that's in Exhibit B to
19 the warrant and then added names that I believed were tied
20 directly or tied to the names in the search warrant. For
21 instance, by this point in the investigation we knew the e-mail
22 addresses of Robert Newman, who was a lawyer for the issuers.
23 So the two e-mail addresses for Robert Newman are included here
24 in addition to Robert Newman's name, whereas I think the search
25 warrant itself only listed his name and not his e-mail

H1NMWEY1

Massey - direct

1 addresses.

2 Q. To whom did you provide this list?

3 A. To the FBI.

4 Q. I think you sort of alluded to this, but was this list at
5 times augmented? Having refreshed your memory with the
6 e-mails, was this list at times augmented with other terms as
7 it became clear to you? Are you able to say this is the final
8 absolute list?

9 A. I'm not. Without a cover e-mail and without access to the
10 system, I can't tell if it's the final list.

11 MR. FERRARA: May I have one moment, your Honor.

12 THE COURT: You may.

13 MR. FERRARA: No further questions, your Honor.

14 THE COURT: Thank you.

15 THE COURT: Mr. Siegal.

16 MR. SIEGAL: Thank you, your Honor. I want to
17 apologize in advance, your Honor, because we do have a lot of
18 material here that we are going to be working with.

19 THE COURT: So that what you say does not get lost in
20 the beauty of the room but falls on our ears, to the extent
21 you're moving around to get materials, don't talk. Wait until
22 you are in front of the microphone.

23 MR. SIEGAL: Thank you, your Honor. I apologize for
24 that. We are going to want to put, just for convenience, a set
25 of the 3500 material in front of the witness. I think your

H1NMWEY1

Massey - cross

1 Honor has a copy already that was provided by the government.

2 THE COURT: This is the complete set of 3500?

3 MR. FERRARA: Yes, your Honor. There was one more
4 page that we didn't have three-hole punched for this witness
5 that I can hand up.

6 THE COURT: All right. Yes. You may put the binder
7 in front of Mr. Massey.

8 MR. SIEGAL: One moment, your Honor. We are just
9 grabbing it.

10 MR. FERRARA: We have one, your Honor.

11 MR. SIEGAL: This is to be --

12 THE COURT: You've already failed to follow my
13 instructions.

14 MR. SIEGAL: I'm sorry, your Honor.

15 THE COURT: It's all right. You'll get used to it.

16 MR. FERRARA: For the record, your Honor, the witness
17 now has a full binder of 3500 in front of him.

18 THE COURT: Thank you.

19 MR. SIEGAL: I am going to move the podium a little
20 bit, your Honor.

21 CROSS-EXAMINATION

22 BY MR. SIEGAL:

23 Q. Good morning, Mr. Massey.

24 A. Good morning, Mr. Siegal.

25 Q. You said you were an Assistant U.S. Attorney in the office

H1NMWEY1

Massey - cross

1 here in the Southern District for eight or nine years?

2 A. I think it was nine years in total.

3 Q. Would you say, given your lengthy experience as an
4 Assistant United States Attorney and now a criminal defense
5 attorney, that it's a fairly unusual occurrence for an
6 assistant to take the witness stand in one of these hearings?

7 MR. FERRARA: Objection to relevance, your Honor.

8 THE COURT: I am going to sustain that.

9 Q. In 2011, 2012, the investigation into New York Global Group
10 and Benjamin Wey was your investigation, right?

11 A. Well, I worked with the FBI, but it was -- I was the AUSA
12 on the investigation.

13 Q. And would you say that it was in part your responsibility
14 to ensure that the investigation complied with the
15 Constitution?

16 A. Yes. Certainly to make sure that I and anyone working with
17 me, any agent of the U.S. Attorney's Office was not violating
18 the Constitution.

19 Q. And were you also responsible for knowing about legal
20 developments in the Fourth Amendment and keeping the
21 investigating agents apprised of those legal developments?

22 A. Within reason as necessary.

23 Q. Would it be fair to say that the responsibility extended in
24 terms of you to ensuring that the face of the search warrant
25 complied with the Fourth Amendment?

H1NMWEY1

Massey - cross

1 A. That's fair.

2 Q. Did you also view it as part of your job to ensure that the
3 affidavit of Agent Komar in support of the search warrant would
4 not be factually false or misleading to the magistrate judge?

5 A. Yes.

6 Q. And you were responsible for drafting the warrant as well
7 as the exhibits, Exhibits A, B, and C, that are attached to the
8 warrant?

9 A. Yes. Together with a lot of help from the FBI agent. I
10 was the initial author and primary author.

11 Q. Now, is it fair to say at the time you and Agent Komar made
12 the application for the warrant that the investigation had been
13 going on for several months at that point?

14 A. I don't remember how long, but that's fair.

15 Q. And during that time there were witnesses being interviewed
16 and documents being reviewed, subpoenas being issued. Is that
17 fair to say?

18 A. Yes.

19 Q. Would it be fair to say that you had multiple conversations
20 with Agent Komar during that time frame about this
21 investigation?

22 A. Yes.

23 Q. Is it also fair to say that the idea to apply for a search
24 warrant was formulated some time prior to January 25, 2012?

25 A. Yes.

H1NMWEY1

Massey - cross

1 Q. At least several weeks before?

2 A. At least.

3 Q. Perhaps even months before?

4 A. Perhaps.

5 Q. So there was no emergency where you suddenly needed to drop
6 everything and go prepare a search warrant overnight, right?

7 A. It was not prepared overnight.

8 Q. Did you feel that you had sufficient time to do all the
9 investigation you needed to make sure that the affidavit was
10 accurate and not misleading?

11 A. I think so. As far as I recall.

12 Q. And I take it in January 2012 you were aware of the Fourth
13 Amendment's particularity requirement with respect to search
14 warrants?

15 A. Yes.

16 Q. Were you generally aware of the prohibition against general
17 warrants under the Fourth Amendment?

18 A. Yes.

19 Q. Now, on direct you testified that in your view New York
20 Global Group at the time you were applying for the warrant was
21 pervaded by fraud. Was that the testimony that you gave on
22 direct?

23 A. Yes.

24 Q. And were you attempting to suggest in that testimony when
25 you and Agent Komar sought the warrant on January 25, 2012 that

H1NMWEY1

Massey - cross

1 you sought to take advantage of the all business records
2 exception to the Fourth Amendment's particularity requirement?

3 A. I don't remember. I don't remember our thinking or my
4 thinking in terms of the exception or -- I remember believing
5 that it needed to be a search warrant that was accurate and
6 with sufficient legal basis. I don't remember the sort of
7 particular nuts and bolts of it in the way you just described.
8 It doesn't spring to mind. It was five years ago.

9 Q. My question to you is, were you aware of the existence of
10 the all documents or all records exception to the Fourth
11 Amendment's particularity requirement at the time that you
12 applied for the want?

13 A. It's really hard to remember exactly what I remember or
14 knew about the law at the time. If it was the law and I was --
15 I was, I think, sufficiently trained and versed in Fourth
16 Amendment law from having been an Assistant U.S. Attorney. As
17 I sit here now, you are citing a very specific sort of
18 exception and rule. If you've got a case, for me to look at
19 the case. I don't have a clear recollection of what exactly I
20 remember. If it's in the warrant, I don't have a clear
21 recollection.

22 Q. Did you have an opportunity to read the government's brief
23 in opposition to our suppression motion before you took the
24 stand today?

25 A. I read part of it, not all of it.

H1NMWEY1

Massey - cross

1 Q. Did you see in those papers that the government makes an
2 argument that this warrant would have been within the
3 all-records doctrine?

4 A. I saw that argument.

5 Q. What I'm trying to figure out from your testimony, sir, is
6 whether you are testifying that you actually made the
7 application pursuant to that doctrine or not.

8 A. I don't recall. I simply don't recall.

9 (Continued on next page)

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H1NAAWEI2

Massey - Cross

1 BY MR. SIEGAL:

2 Q. Now, you said that you believed that New York Global Group
3 was pervaded by fraud but are the words "pervaded by fraud"
4 anywhere in the 97 page application affidavit that you drafted?

5 A. I'd have to do a search of the document to see if "pervaded
6 by fraud", those precise words are there. I've reviewed it and
7 I've seen that it goes on for page after page about the history
8 of Ben Wei's security fraud and fraud that has taken place
9 after issuer and at great lengths I don't know if I wrote the
10 summary conclusory sort of sentence pervaded by fraud but I
11 think that's the clear import of it.

12 Q. Sir, I'm just asking whether you wrote in the affidavit
13 that you drafted that this business was entirely illegal and
14 pervaded by fraud, did you write that in the affidavit that you
15 drafted?

16 A. I don't recall if those words are there. I'd have to do a
17 search. Based on the way you are asking it, I'd assume they're
18 in there.

19 Q. The face of the warrant, that doesn't say that you seek
20 from the magistrate judge permission to seize all records of
21 business, does it? It goes on for 17 pages with three
22 different lists, right?

23 A. Correct.

24 Q. Would have been a much shorter warrant if what you were
25 applying for was a search warrant to seize all the record of

H1NAAWEI2

Massey - Cross

1 the business, right?

2 A. It was a good faith attempt to delineate the categories of
3 records that were -- there was probable cause to believe may be
4 evidence of a fraud and it would be on the premises.

5 Q. Sir, isn't it true that even Agent Komar himself
6 acknowledged in the affidavit that in fact he did not have PC
7 to suggest that the entire business was illegal?

8 A. I don't recall that. If you show it to me I can tell you
9 whether it's there are to not.

10 Q. When I say "PC" I am referring to probable cause. I'd like
11 to refer you to page 67 of the Komar affidavit note 11.

12 A. OK. That's Government Exhibit One, Two?

13 Q. Government Exhibit Number Two.

14 A. Page what?

15 Q. 67.

16 A. I've got page 67.

17 Q. Footnote 11 there is, says even assuming many of these
18 basic corporate documents primarily relate to legitimate
19 aspects of U.S. Global Group -- see that phrase?

20 A. Yes, I do.

21 Q. So, isn't it fair to say, sir, that at the time you applied
22 there this search warrant you realized you did not have PC,
23 probable cause, to assert that the entire business was
24 illegitimate; isn't that fair to say?

25 A. Can you give me one minute. I'm just reading the footnote.

H1NAAWEI2

Massey - Cross

1 OK. Well, I mean it's a phrase as a hypothetical. Even if
2 these documents relate to something legitimate it doesn't say
3 they do relate to anything legitimate and it's, I think it's
4 very clear from this footnote and the page that follows that
5 because of Ben Wei's assertion that he was making money only
6 through New York Global Group which in turn was only making
7 money through advisory fees of New York Global Group -- that
8 you needed to understand the entire business, even if some part
9 of the business was legitimate in order to understand what all
10 of the revenue, all of the expenses to address that claim
11 because it appeared to be clearly false. He was making way too
12 much money to be accounted for by those types of fees.

13 Q. So, sir, does the wording of the sentence say, even
14 assuming many of these basic corporate documents and primarily
15 relate to legitimate aspects of New York Global Group's
16 business they would provide background that is necessary to
17 fully under the nature and the scope of the business?

18 MR. FERRARI: Objection. It speaks for itself. He's
19 asked the question. It's becoming argumentative, your Honor.

20 THE COURT: Sustained.

21 Q. Now, you had a confidential source who was working at the
22 business at the time, right? That was part of your
23 investigation? There are references to information from that
24 confident source in the affidavit?

25 A. Which one are you referring to is the confidential source

H1NAAWEI2

Massey - Cross

1 one?

2 Q. I don't recall which one it is but is it fair to say that
3 you did quote at least one witness in the affidavit who was a
4 current employee of the business?

5 A. As I sit here now I don't recall if the confidential source
6 was a current or former employee. If you refer me to the page
7 in the affidavit I could see what it says on it.

8 Q. You did have an employee who was at least recently employed
9 in the business, right, as a source?

10 A. It sounds right. I just don't remember how recently
11 employed.

12 Q. Is it fair to say that you didn't write anything in this
13 97-page affidavit where any employee witness told you the
14 entire business is a fraud, right, that's not in this
15 affidavit, is it?

16 A. I don't think this sentence that you just spoke is in here
17 where -- I don't think it says a current or former employee of
18 the business told us that the entire business is a fraud. I'm
19 not sure. I'd have to read the whole thing again to make sure.

20 Q. In fact, you don't have any witness quoted in the affidavit
21 who says anything like that, do you?

22 A. Not as I recall sitting here now but to confirm it I'd have
23 is to read the whole thing.

24 Q. Now, at the time that you're saying now you believed the
25 entire business was a fraud you had the power at that time,

H1NAAWEI2

Massey - Cross

1 didn't you, to seek probable cause to seize the assets of the
2 business if you actually had a probable cause to believe the
3 whole business was a fraud?

4 MR. FERRARI: Objection; relevance.

5 THE COURT: Overruled.

6 A. Well, at that time I don't think I unilaterally had the
7 power or authority to seize assets of a business. We had
8 done -- well --

9 Q. Is that one of the --

10 A. Well, let me finish explaining if I could. I believe I had
11 the power to draft a civil -- I could have draft a civil
12 forfeiture action an interim forfeiture action, United States
13 of America versus assets, a bank account or what have you and
14 that could have included a lot of assets. So, I believe I had
15 the power to do that but that would then be a civil action I
16 didn't have the power to seize.

17 Q. But you didn't do any of that, did you?

18 A. Did not draft a civil forfeiture action at the time of the
19 search.

20 Q. And you didn't make any arrests at the time you executed
21 these seizures, correct?

22 A. Correct.

23 Q. In fact, no one was charged by you in connection with the
24 business in 2012, right?

25 A. Correct.

H1NAAWEI2

Massey - Cross

1 Q. Or in 2013, right?

2 A. Correct.

3 Q. Or really any time before you left the U.S. Attorney's
4 Office, right?

5 A. That's right.

6 Q. And indeed another AUSA was added to the team in the middle
7 of 2013, right?

8 A. I don't remember exactly when she was added but she was
9 added before I left.

10 Q. That was Antonia Apps, right?

11 A. That's right.

12 Q. And she stayed in the office almost a year beyond when you
13 did?

14 A. At least. I'm not sure exactly when they left.

15 Q. As far as you knew during your entire and during her entire
16 tenure, the United States Attorney's Office didn't freeze or
17 seize the assets of that supposedly completely fraudulent
18 business or charge anybody in the business during that entire
19 time?

20 A. I believe that's right. I don't remember exactly when she
21 left. I think she left before the charges were filed.

22 Q. Sir, is it your understanding that under the law even if
23 you had asserted in 2012 that the entire business was a fraud
24 that gave you the right to seize every record at the home of
25 Michaela and Ben Wei?

H1NAAWEI2

Massey - Cross

1 MR. FERRARI: Objection.

2 THE COURT: Overruled.

3 A. Could you rephrase the question? I'm sorry.

4 Q. The government is contending in this case that these
5 warrants would have satisfied the All Records Exception.

6 Whether or not you actually intended to seek a warrant for the
7 business in 2012 under that exception, do you believe that your
8 understanding of the business gave you the right to seize every
9 record at the home of Benjamin and Michaela Wei?

10 A. No. I think -- well, it depends on what was there. I
11 didn't know what was there. I didn't go there. But if there
12 was evidence, for example, of child pornography that would not
13 have been within the scope of the warrant and they would not
14 have been able to take it or evidence of a material support or
15 a drug ledger or something like that.

16 Q. Fair to say that the warrant that you drafted for the
17 apartment for Benjamin and Michaela Wei was an attempt to
18 particularize particular items that you believe were responsive
19 to the probable cause that you had to search?

20 A. I think that's fair.

21 Q. As opposed to a warrant that sought to seize all records at
22 their home?

23 A. Well, the warrant is what it is. I mean, and it doesn't
24 state the legal theory behind it but it describes the
25 categories of records that we believe to be there was records

H1NAAWEI2

Massey - Cross

1 that fell within the PC established by the affidavit and they
2 were particularized.

3 Q. So, your position is that the warrant for the apartment was
4 an attempt to particularize what could be seized?

5 A. Well, I'm not taking a legal position. I'm just telling
6 you what we did.

7 Q. Sir, if you could just take a look at the warrant for the
8 apartment and the warrant for the office. Take a look at those
9 at the same time and compare them to one another.

10 A. OK. Those are GX what again?

11 Q. Pardon me. I'll just check.

12 THE COURT: Two and three.

13 Q. Government Exhibits Three and Ten.

14 A. Three and ten?

15 Q. Yes.

16 A. I see three and ten.

17 Q. So, preparing the warrant for the apartment, the one we
18 just discussed where you say it was an attempt to particularize
19 what could be taken, apart from the exclusion relating to the
20 office of James Baxter, is there any difference in the wording
21 of the search warrant for the apartment and the search warrant
22 for the office?

23 A. And other than the difference in the premises we searched?

24 Q. Yes.

25 A. I don't know. I'd have to do a line-by-line comparison if

H1NAAWEI2

Massey - Cross

1 you want me to be absolutely precise in my answer but if what
2 you are getting at is is Exhibit A largely the same, it,
3 certainly, does appear to be largely the same and Exhibit B I
4 believe as well.

5 Q. Do you have any reason to believe that they're not
6 identical?

7 A. I have no reason to believe they are not very, very similar
8 if not identical but I'd have to do a line-by-line comparison
9 to be absolutely sure.

10 Q. You said in your opening testimony that you believed the
11 agents understood what the investigation was about from the
12 face of the warrant, right?

13 A. Yes.

14 Q. Am I properly characterizing your testimony?

15 A. Yes.

16 Q. And you would acknowledge though that the face of the
17 warrant doesn't list any federal criminal code sections, right?

18 A. That's right.

19 Q. There's it no reference to any code section for securities
20 fraud, is there?

21 A. Not that I've seen.

22 Q. Or wire fraud?

23 A. No.

24 Q. Or money laundering?

25 A. No. The particular statutes are not listed.

H1NAAWEI2

Massey - Cross

1 Q. Now, the words "money laundering", those don't appear
2 anywhere in the warrant either, Exhibit A, B or C?

3 A. Yeah. I'm not sure we were particularly focused on money
4 laundering but opposed to underlying fraud for purposes of
5 search but if you say it's not in here, it's not in here.

6 Q. Do the words "security fraud" exists together in that
7 warrant?

8 A. No.

9 Q. "Mail fraud"?

10 A. No.

11 Q. Sir, what's the federal code section for fraud?

12 MR. FERRARI: Objection, your Honor. There are
13 numerous code sections that's apply to fraud.

14 THE COURT: Sustained.

15 Q. There is no omnibus federal fraud section, is there? There
16 are many different ones, right?

17 A. Yes.

18 Q. Fraud itself is not a federal crime, right?

19 A. Well, if you take that single word you've got to have a
20 mail or wiring for securities transaction to go with it.

21 Q. And this is a federal search warrant, right?

22 A. Yes.

23 Q. Being executed by federal law enforcement, right?

24 A. Yes.

25 Q. Supposedly investigating federal crimes, right?

H1NAAWEI2

Massey - Cross

1 A. Yes, from the securities, a securities fraud squad.

2 Q. Yet, no where on this warrant is any federal criminal
3 statute referenced or described, is there?

4 A. No?

5 THE COURT: Mr. Siegel, I'll let you make a summation
6 at the close of testimony. So, please just keep the questions
7 to gathering facts.

8 MR. SIEGAL: I'll move on, your Honor.

9 Q. Now, you pointed to a couple of the paragraphs of Exhibit A
10 to the search warrant when you were talking about how you
11 believed that told you that the agents understood what they
12 were searching for, right?

13 A. Which exhibit and which paragraph? 2A?

14 Q. If you take a look at Government Exhibit Three.

15 A. OK.

16 Q. In your direct testimony Mr. Ferrara pointed you to
17 paragraphs one and two and you said that you believed that
18 those two passages would informed the agents that what they
19 were investigating was a financial fraud?

20 MR. FERRARI: Objection. I didn't point him to that,
21 your Honor.

22 THE COURT: Sustained.

23 Q. Sorry. Then you pointed to those passages, did you not,
24 sir?

25 A. I think so. I don't know if I said that was the only way

H1NAAWEI2

Massey - Cross

1 the agents would have been aware of it but that's certainly one
2 way.

3 Q. But that's not the only limitation to Exhibit A, is it?

4 This Exhibit A covers, among other things, paragraph six,
5 photographs, address books, Rolodexs, diaries, income tax
6 returns and calendars; do you see that?

7 A. Yes.

8 Q. Also, hotel, airline, credit card receipts, reflecting the
9 dates and locations of meetings or travel to meetings. That's
10 also there, right?

11 A. Yes.

12 Q. Paragraph 1 refers to identification documents and other
13 documents which may reflect the identities of persons listed in
14 Exhibit B?

15 A. Yep, that's there.

16 Q. Corporate documents reflecting ownership?

17 THE COURT: Sustained.

18 Q. Sir, is it fair to say that the warrant covers quite
19 clearly a large panoply of types of documents beyond just
20 financial records?

21 A. That's right.

22 Q. Now, Agent Komar's affidavit was not attached to a warrant,
23 was it?

24 A. No.

25 Q. That was actually placed under seal at the time of the

H1NAAWEI2

Massey - Cross

1 application, right?

2 A. Correct.

3 Q. And it was your anticipation that the searching agents
4 wouldn't each be carrying a copy of the 97-page affidavit at
5 the search, right?

6 A. I don't know if I had an expectation as to what each of the
7 agents would be doing even that point.

8 Q. But it is your intention that the 97-page affidavit would
9 not be given to the occupant of the office when the search
10 began, right?

11 A. Correct.

12 Q. That was to remain under seal?

13 A. Correct.

14 Q. So none of what's in the affidavit is incorporated by
15 reference into the search warrant that was being handed to the
16 occupants of --

17 A. The affidavit was not handled to the occupants.

18 Q. Is there a date or time limitation anywhere on the search
19 warrant as you can see it?

20 A. In terms of you mean, certainly, it was to be done during
21 the daytime. Do you mean the scope of the conduct?

22 Q. To the scope of what can be seized?

23 A. I don't believe so.

24 Q. So, according to this warrant even if a note or a memoranda
25 or a videotape was 30 years old, this warrant gave the agents

H1NAAWEI2

Massey - Cross

1 the right to seize that, right?

2 A. Well, if it related to one of the individuals or entities
3 in Exhibit B, yes, I believe so.

4 Q. Is it fair to say, sir, that Exhibit A was an attempt by
5 you to cover basically every form or format of material that
6 could be found in a location from notes, handwritten notes,
7 scraps of paper, every form of item that could be found?

8 A. No, that's not correct.

9 Q. Well, it does refer to every electronic device, right?

10 A. Refers to every electronic device that could be found.

11 Q. Right. And it refers to notes, memoranda?

12 A. Yes.

13 Q. It refers to --

14 MR. FERRARI: Object on 403 grounds. I think it's
15 cumulative and a waste of time. The exhibit speaks for itself.

16 THE COURT: Sustained.

17 Q. Is there any type of document, sir, that you can think of
18 that isn't covered on the face of Exhibit A? I'm not talking
19 about subject matter. I'm talking about type?

20 A. I don't want to have a debate with you but, yeah, I could
21 think of one thing that probably isn't covered. If there's a
22 prescription maybe you'll find a place where it's covered but
23 certainly prescription drug medication if someone is taking
24 heart medication or something like that that would be a
25 document found prescription to a child or a parent in the

H1NAAWEI2

Massey - Cross

1 apartment. I don't think that would be within the scope here.

2 Q. So, that would be outside the scope of this warrant you are
3 saying?

4 A. I'd have to read the whole thing to figure it out but
5 certainly, the idea was or again, if child pornography had been
6 found, that would not be within the scope or a drug ledger or
7 drug paraphernalia wouldn't be within the scope. If there's
8 writing on a packet of heroin, that wouldn't be within the
9 scope. If there is writing on, if there was a al-Qaeda
10 manifesto, I don't think that would be within the scope.

11 Q. Well, moving on --

12 THE COURT: Move on.

13 Q. Do you see how each of the paragraphs has this caveat with
14 respect to except for paragraph number seven, each of the other
15 ones refers to the list of Exhibit B that is looking at
16 paragraph number two? Paragraph number one says financial
17 records concerning the individuals and entities listed in
18 Exhibit B; do you see that?

19 A. Yes.

20 Q. And that restriction so to speak is referred to in every
21 one of these paragraphs except number seven?

22 A. I don't see it in paragraph one or two.

23 Q. Well, one says --

24 A. Oh, yes, I do. You're right. It's in one and two. I
25 mean, I would have to read each paragraph to answer your

H1NAAWEI2

Massey - Cross

1 question but it does not appear to be in seven as you say. At
2 a glance that does appear to be in the others.

3 Q. Sorry. With respect to number seven --

4 A. Oh, you are right.

5 Q. -- where it says with respect to Exhibit B is it refers to
6 electronic equipment used by or used in connection with the
7 individuals and entities listed in Exhibit B?

8 A. Um-hmm.

9 Q. So each of the paragraphs refers to the list in Exhibit B?

10 A. Appears to.

11 Q. Is it fair to say that Exhibit B was an attempt by you to
12 satisfy the particularity requirement?

13 A. It was a good faith attempt to make sure that the
14 information taken was within the scope of the affidavit and it
15 was PC to take it.

16 Q. It's a pretty long list, right? It's got 200 or more pages
17 right.

18 A. It is a long list.

19 Q. Now, I take it you understood that the FBI agents who were
20 going to execute the search understood the office they were
21 going to search was the offices of New York Global Group,
22 right?

23 A. Yes.

24 Q. And that appears on the very first page of the warrant,
25 right?

H1NAAWEI2

Massey - Cross

1 A. Yes.

2 Q. But in fact, the very first name on Exhibit B that also
3 says New York Global Group Inc., right?

4 A. Yes.

5 Q. Was the significance of the fact that you had listed all
6 these types of documents with respect to any name on Exhibit B,
7 the fact that the owner/occupant of that location was the very
8 first name on the list or did you appreciate that that's how
9 you had drafted the search warrant at the time?

10 A. Well, I appreciated that all financial records of New York
11 Global Group should be within the scope of the warrant. That
12 I'll take each paragraph and go through each one. I understood
13 that was being drafted. But to take these other examples, if a
14 bag of heroin were found on the premises and it had writing on
15 it but it didn't say, I suppose if it said New York Global
16 Group it would be within the scope of the warrant. But if it
17 isn't the same as it would be that none of those things if they
18 didn't say New York Global Group on them or those other names,
19 they wouldn't have been within the scope and it would have to
20 have been left behind.

21 Q. OK. But I'm talking about business records for a moment.
22 Is it fair to say that the document Exhibit A covers basically
23 every kind of business record you could think of?

24 A. Well, that I can think of now or I could think of then? I
25 mean, it covers --

H1NAAWEI2

Massey - Cross

1 Q. Did you at the time seek to cover every type of conceivable
2 business record you could think of when you drafted the
3 warrant?

4 A. I don't remember if I sought to seek every type of business
5 record I could think of.

6 Q. Well, let me ask you this. When you explained at the
7 briefing what the warrant meant that they couldn't take, did
8 you tell them there was any type of business records of the
9 business that they were not entitled to take?

10 A. I don't recall. I'm sure -- I remember that meeting
11 vaguely. I do remember clear instructions to agents that they
12 should take what's called for in the warrant and they should
13 read it.

14 Q. You knew at the time that Benjamin Wei was the CEO of New
15 York Global Group?

16 A. Yes.

17 Q. You also knew that Michaela Wei was an owner and executive?

18 A. I knew that she was an executive officer and at least a
19 nominal owner in with at least one securities file and I found
20 out she was also a bookkeeper as well.

21 Q. Their name too appear on Exhibit B, as well?

22 A. Those two appear on Exhibit B, yes.

23 THE COURT: Mr. Siegal, about how much longer with
24 this witness?

25 MR. SIEGAL: I've got a fair amount, your Honor.

H1NAAWEI2

Massey - Cross

1 THE COURT: All right. We'll take a ten-minute break.

2 Someone has a phone pinging which is frustrating on a
3 number of levels including the fact that it shouldn't be in the
4 courtroom. If you are going to violate that rule you ought to
5 be quieter about it. So if I hear it again it'll be
6 confiscated. Thank you.

7 (Recess)

8 THE COURT: Remind Mr. Massey that he is under oath.

9 BY MR. SIEGAL:

10 Q. Sir, we were talking earlier about how the search warrant
11 for the apartment and the search warrant for the office were
12 effectively identical and that the Exhibit B has Benjamin and
13 Michaela Wei's name on it. Did you understand when you sent
14 the agents off to search the home of, at West Street that that
15 was the home of Benjamin and Michaela Wei and their family?

16 A. Yes.

17 Q. Did you know at the time they had three young children?

18 A. I think I knew they had children. I don't remember if I
19 knew there were three.

20 Q. And you said earlier that you believed that the warrant
21 wouldn't cover things like, for example, prescriptions for
22 medication, right?

23 A. Yes. If you are asking me what I said I think I said that.

24 Q. Would you be surprised if it turned out the agents who
25 searched Benjamin and Michaela Wei's home actually took

H1NAAWEI2

Massey - Cross

1 multiple prescription papers?

2 MR. FERRARI: Objection.

3 THE COURT: Grounds?

4 MR. FERRARI: It's irrelevant whether he would be
5 surprised or not. This is an issue of what was called for in
6 the warrant.

7 THE COURT: Overruled.

8 MR. SIEGAL: Your Honor, I'm going to mark as Defense
9 Exhibit One a compilation of three or four pieces of paper.
10 May I approach, your Honor?

11 THE COURT: You may. Do you have copies for opposing
12 counsel?

13 MR. SIEGAL: Your Honor, we don't because these are
14 originals and in fact we were never given copies of these in
15 the production so, we're going to have to work with the
16 originals.

17 THE COURT: You didn't have copies?

18 MR. SIEGAL: They just brought them today. These are
19 documents. Just so it's clear, your Honor, they are in folders
20 that have been in the possession of FBI since 2012. We saw
21 them for the first time last week when we went to look at the
22 original search material and we don't have copies of these
23 anywhere.

24 MR. FERRARI: And I apologize, your Honor, I have no
25 objection. Just for clarity of the record, we had invited

H1NAAWEI2

Massey - Cross

1 Mr. Siegal over to look at the physical evidence that was of
2 course available to him. He chose to do that as he ought to.
3 I believe it was two weeks ago that he saw it. So, I'm OK with
4 the fact that there's no copies for us. I simply wanted to
5 look at it before he handed it up to Mr. Massey.

6 MR. SIEGAL: If your Honor prefers, I can mark each of
7 these as a separate exhibit.

8 THE COURT: I do prefer.

9 MR. SIEGAL: OK.

10 THE COURT: Is it possible with assistance from my
11 staff at the next break to make copies of those? It's helpful
12 to me to be able to see the document as we're talking about
13 them and potentially may need them going forward copies of them
14 that is. So to the extent there's more of this, if you could
15 anticipate at the lunch break and make copies and have the
16 government make copies. Failing that, ask my staff for
17 assistance. Thank you.

18 MR. SIEGAL: Your Honor, I just have a word about
19 these documents before we make them official parts of the
20 record which is that they contain some sensitive personal
21 information. So, I'd ask that at least some of the documents
22 that we're going to show the witness be either kept under seal
23 or redacted.

24 THE COURT: That's fine, given what has been indicated
25 is contained in them.

H1NAAWEI2

Massey - Cross

1 So, you've marked them what you've marked --

2 MR. SIEGAL: Sorry, your Honor. I am going to be
3 marking Exhibits One, Two -- Defense Exhibits One, Two, and
4 Three. I'm going to try to stick this one which was shredded
5 in half as one item.

6 THE COURT: OK.

7 MR. SIEGAL: May I approach?

8 THE COURT: Let me just take a quick look and then
9 we'll give them to Mr. Massey.

10 (Pause)

11 THE COURT: OK.

12 BY MR. SIEGAL:

13 Q. Mr. Massey, I've put in front of you Defense Exhibits One,
14 Two and Three just focusing on your attention on all three of
15 them as group. Is it fair to say that you recognize those as
16 medication prescriptions?

17 A. They do not appear to be medication prescriptions to me.

18 Q. Oh, well --

19 MR. SIEGAL: May I approach, your Honor.

20 THE COURT: Yes. But counsel, why don't you ask the
21 witness a question that pertains to his experience and the fact
22 that's observed in the world and if that doesn't do what you
23 are trying to do, then you'll have to do it some other way.

24 MR. SIEGAL: I just wanted to read him what they say
25 but that's fine, your Honor.

H1NAAWEI2

Massey - Cross

1 Q. Sir, looking at those documents, do those strike you as
2 documents covered by the search warrant?

3 A. Well --

4 Q. As you understood your investigation, as you say you
5 described it to the agent at the briefing on the 24th?

6 A. I can, if you let me explain. I can distinguish this from
7 what I was saying before and explain why one in particular,
8 especially in light of fact that it's ripped in half but
9 because of the name that is on it, why it would be relevant.

10 Q. So, sir, one of those documents says Ying Mao Wei on it?

11 A. Yes.

12 Q. And that is one of the names on Exhibit B, right?

13 A. Yes.

14 Q. And is it fair to say you understood him to be a minor and
15 a relative of Benjamin and Michaela Wei?

16 A. Yes.

17 Q. Is it fair to say that document in front of you, whether
18 you understand it or not, is a prescription for medicine for
19 Mr. Ying Mao Wei?

20 A. It's not a prescription. It appears to me to be the type,
21 based on my own experience, the type of information that would
22 be included when you pick up a prescription, not the actual
23 prescription itself, that it would sort of come with the
24 medication. It would come with other pricing information, cost
25 information, which I would argue if you are asking me for the

H1NAAWEI2

Massey - Cross

1 truth, asking me whether I think it's within the scope of the
2 warrant information about cost of expenses like this could well
3 be within the scope of the warrant because the personal
4 expenses of Michaela and Ben Wei were brought into the scope by
5 the transfer of large amounts of money from Tianyi Wei the
6 mother of Ying Mao Wei from Hong Kong to a personal account of
7 hers.

8 Q. So, your position is that to the extent a document in the
9 Wei home either refers to or suggests the expenditure of any
10 amount of money no matter how small, that was a document that
11 was seizable pursuant to the search warrant?

12 A. Well, you are asking -- I mean, you are asking me
13 essentially for a legal opinion, I think.

14 Q. I'm asking you whether or not you told the agents that this
15 was something that was not covered by the warrant as part of
16 your conversation with them on the 24th?

17 MR. FERRARI: I want to object because this document
18 is not in evidence.

19 THE COURT: True.

20 MR. FERRARI: And I'm not suggesting Mr. Siegal can't
21 get it into evidence with another witness but I don't think
22 this is the right moment. So, we're now asking the witness to
23 explain something I'm not sure the witness is clear where it
24 came from.

25 THE COURT: Sustained.

H1NAAWEI2

Massey - Cross

1 MR. SIEGAL: I'm going to offer the document subject
2 to connection, your Honor, into objection. This is the --

3 THE COURT: Sustained.

4 Q. Sir, is it your position that a prescription for Michaela
5 Wei's birth control is something that would be seizable under
6 the warrant?

7 MR. FERRARI: Asked and answered.

8 THE COURT: Overruled.

9 A. I don't want to give you a legal opinion on this.

10 Q. I'm not asking --

11 A. I don't know where they were found.

12 THE COURT: Counsel and Mr. Massey, you cannot talk
13 over each other. So Mr. Massey will be permitted to finish his
14 response and then you may ask the go ahead.

15 A. I don't know where these were found. I don't know what the
16 other documents were in the file. It was late. The agents, it
17 wouldn't --

18 THE COURT: Actually, Mr. Massey, I am going to
19 redirect you to the question.

20 Is it your position that a prescription for Michaela
21 Wei's birth control is something that would be seizable under
22 the warrant?

23 A. I would say, no, I think.

24 Q. Is it your position that a report of the PSAT scores for
25 Ying Mao Wei would be seizable pursuant to the warrant?

H1NAAWEI2

Massey - Cross

1 A. Does the report indicate where he would attend school.

2 Q. I'm just asking you whether that kind of document,
3 generally speaking, would be seizable under the warrant?

4 A. In this case it indicated where he would attend school. I
5 would say, "yes". If it isn't I would say "no".

6 Q. What about chest and pelvis x-rays of Michaela Wei, would
7 those be something that you would think would be seizable under
8 the warrant?

9 A. The contents of the x-ray I would say "no".

10 Q. How about a child, an adolescent health examination form
11 for a five-year-old child?

12 MR. FERRARI: Your Honor, I object. We are prepared
13 for this line of questioning but the fact of matter is that
14 where these record came from is crucially important. I object
15 because I think this line of questioning is on some level
16 misrepresenting what actually happened and also the opinions
17 the witness is offering are really for this Court to make at
18 the end of the day?

19 THE COURT: Overruled. I will allow it and take it
20 for what it's worth. And to the extent that later when and if
21 these documents are moved into admission you can properly
22 cross-examine and tie that back in your summation.

23 Q. Would you regard --

24 THE COURT: You'll have redirect too, counsel.

25 Q. Would you regard a news clipping reporting that Michaela

H1NAAWEI2

Massey - Cross

1 Parakova played for the tennis team of Central Oklahoma
2 University in 1999. Would you think that would be something
3 that would be covered by the warrant?

4 A. I think you are asking me for legal opinion. If it's in
5 the file that contains other documents, shows that she shows
6 how he met her in Oklahoma, it contributes to that information
7 it might be relevant.

8 MR. SIEGAL: Your Honor, we'll move on. If I could
9 just collect those.

10 THE COURT: You may.

11 (Pause)

12 Q. Is there anything, sir, with respect to the x-rays that you
13 recall saying on January 24, 2012 to the search team when you
14 were briefing them for the search that would have told them
15 they were precluded from taking Michaela Wei's chest and pelvis
16 x-rays?

17 A. The 24th is the day before the search?

18 Q. Yes?

19 A. I don't recall whether I mentioned the x-rays on the 24th.
20 I certainly doubt it. I mean, I don't think I knew that there
21 were x-rays as of that time.

22 Q. The agent never told you, did they, on that day that they
23 were seizing her x-rays, did they?

24 A. Which day?

25 Q. Sorry. On the 25th when they were in the apartment.

H1NAAWEI2

Massey - Cross

1 A. I don't recall. I don't believe so but I don't recall.

2 Q. Did you ever learn during the course of your time when you
3 were an AUSA that the agents had seized Michaela Wei's chest
4 and pelvis x-rays from her home?

5 A. I don't recall when I learned that.

6 Q. Now, one of the things the search team seized during the
7 search of the apartment was Michaela Wei's Blackberry; are you
8 aware of that?

9 A. Yes.

10 Q. Are you also aware that earlier in the day when the agents
11 were searching the offices that they imaged several iPhones and
12 Blackberries?

13 A. I don't recall if they imaged them on sight or later.

14 (Continued on next page)

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H1NMWEY3

Massey - cross

1 Q. When I say imaged, do you know what I mean by that?

2 A. Yes.

3 Q. Is it fair to say that you understand imaging to be when
4 some members of the CART team has some sort of device that he
5 brings with him to make a forensic image of a handheld device
6 so that the person can keep their original handheld device
7 while the CART team actually gets to take that acknowledge with
8 them?

9 A. I understand that's what that is. I don't recall if images
10 were taken.

11 Q. Can I just focus your attention on Exhibit C to the
12 warrants. We can use the one for the apartment since that's
13 the one I am going to be talking about.

14 THE COURT: Government exhibit?

15 MR. SIEGAL: 10, your Honor.

16 THE COURT: Exhibit C to government 10.

17 MR. SIEGAL: Yes.

18 A. I see Government Exhibit 10. Exhibit C?

19 Q. Yes. Do you see that it's entitled methods to be used to
20 seize and search computers and computer-related equipment?

21 A. I see that.

22 Q. There are multiple paragraphs of instructions here for the
23 agents as to how to treat certain electronic items found,
24 right?

25 A. Yes.

H1NMWEY3

Massey - cross

1 Q. And this is the set of instructions that were presented to
2 Magistrate Judge Dolinger and that he ordered, right?

3 A. Yes.

4 Q. Do you see how it says: Upon securing a premises, law
5 enforcement personnel trained in searching and seizing computer
6 data, which is then defined as the computer personnel, will
7 make an initial review of any computer equipment and storage
8 devices to determine whether these items contain contraband and
9 whether these items can be searched on site and in a reasonable
10 amount of time and without jeopardizing the ability to preserve
11 the data. Do you see that?

12 A. Yes, I see that.

13 Q. What does it mean. Can you explain what contraband means
14 in this context?

15 A. Evidence of a crime, I think.

16 Q. It doesn't mean, for example, things that are in and of
17 themselves illegal, like child pornography. You are saying it
18 refers to evidence of a crime?

19 A. I don't know. I'd have to find the meaning of -- how
20 contraband is defined here. I think if they found child
21 pornography they would have to get another warrant. They would
22 know that. It might include that. So they are doing an
23 initial search to determine whether it contains evidence of the
24 specified crime or possibly also another crime. I'd have -- I
25 don't recall as I sit here now how the term contraband is used

H1NMWEY3

Massey - cross

1 here.

2 Q. If we can go on to paragraph B, maybe this will help us all
3 figure out what this means. Paragraph B says: If the computer
4 equipment and storage devices cannot be searched on site within
5 a reasonable amount of time and without jeopardizing the
6 ability to preserve the data and if the computer equipment and
7 storage devices do not contain contraband, then the computer
8 personnel will determine whether it is practical to copy the
9 data during the execution of the search in a reasonable amount
10 of time without jeopardizing the ability to preserve the data.
11 Do you see that?

12 A. I see that, yes.

13 Q. Am I correct in understanding that what this means is that
14 the CART team is going to make a couple of determinations as
15 they are on site with respect to certain electronic devices.
16 The first is whether or not they can be searched on site within
17 a reasonable amount of time and without jeopardizing the
18 ability to preserve the data. That's essentially the first
19 inquiry they are going to make.

20 A. That's one of the things they are supposed to do here.

21 Q. Is it fair to say that by 2012 basically CART agents never
22 examined electronic devices on site, right? There is too much
23 data on all these devices?

24 A. I would not feel comfortable representing that CART agents
25 never did that. I don't know.

H1NMWEY3

Massey - cross

1 Q. Are you aware whether the agents determined in any
2 particular instance that they could conduct the examination of
3 the onsite iPhones and BlackBerries at the residence?

4 A. In this case or --

5 Q. In this case.

6 A. You are asking me what I remember in their representation
7 to me about whether they could or they could not do it all at
8 once?

9 Q. Yes?

10 A. I think most, if not all, of the devices my recollection is
11 that they could not do it in sufficient time to image on site.

12 Q. I'm sorry. To image on site or to search on site?

13 A. To search or -- and/or image on site.

14 Q. You believe they didn't have time to image any of the
15 phones or BlackBerries?

16 A. My recollection is that they made the determination, which
17 is fairly common, as you suggested, that it was impossible to
18 preserve the evidence and do the searching and imaging on site.

19 Q. Those are two different things. I'm actually asking you
20 whether you know sitting here today whether they searched, in
21 other words, whether they looked through the iPhones and
22 BlackBerries as opposed to just imaging them on site.

23 A. I don't know if they did. I wasn't there.

24 Q. You don't recall, for example, that the logs reflect that
25 four or five iPhones or BlackBerries were actually imaged on

H1NMWEY3

Massey - cross

1 site at the office?

2 A. As I sit here now, I don't recall that.

3 Q. Do you recall anybody telling you from the search team that
4 there was some problems specifically with respect to Michaela
5 Wey's cell phone, that that cell phone could not be imaged on
6 site?

7 A. I don't remember when they told me this or whether it was
8 that cell phone in particular. But I do remember that they
9 were unable to unlock one phone that was properly seized, and I
10 think that problem persisted. I don't remember when I learned
11 of that.

12 Q. But you have no specific recollection of somebody from the
13 CART team telling you that Michaela Wey's BlackBerry could not
14 be imaged within the three or four or five hours that the
15 agents were at her apartment?

16 A. I don't recall that one way or the other, as I sit here
17 now.

18 Q. But these instructions, is it fair to say, actually say
19 that if it is practical to make an image on site that that's
20 what's supposed to happen?

21 MR. FERRARA: I am going to renew my 403 objection,
22 your Honor.

23 THE COURT: Mr. Siegal, there is no jury. Get your
24 points. Move on. I'll let you do summation. OK.

25 So sustained.

H1NMWEY3

Massey - cross

1 Q. Mr. Massey, we have already established that you were not
2 at the apartment that day, right?

3 A. That's right.

4 Q. And you were not in a position to make a call on each and
5 every piece of material that the agents seized during the
6 course of their searches of the office and the apartment?

7 A. That's right.

8 Q. Indeed you actually had a number of communications with
9 Agents Komar and McGuire, some of them by e-mail that day,
10 right?

11 A. I don't think with Agent McGuire. I don't think he was on
12 the matter at that time, as I recall it, but I certainly had
13 communications with Agent Komar.

14 Q. Did you have a chance to look at some of those e-mail
15 communications before today?

16 A. I looked at a stack of them -- I looked at a stack of
17 e-mails before today.

18 Q. Do you recall any of those e-mails relating to questions
19 specifically asking whether any particular item could be or
20 could not be seized?

21 A. As I sit here now, I don't recall whether they addressed
22 that. I don't recall whether the e-mails addressed that.

23 Q. I take it sitting here today you don't have any specific
24 recollection of any questions and answers between you and the
25 agents while they were conducting the search relating to

H1NMWEY3

Massey - cross

1 whether they could take or not take any particular item?

2 A. I have a recollection of John, this issue of potentially
3 privileged documents being segregated and taken by the attorney
4 for Michaela Wey, John Bostany. That's all I remember as I sit
5 here now. I guess I also remember -- I think I remember
6 learning from the agents one or more of the agents, either
7 Agent Pisano or Agent Komar, that they understood that someone
8 was taking trash out a back door at the time -- at or about the
9 time of the search and that they had some basis to believe that
10 documents were being destroyed, and I think I said they could
11 take that trash bag of documents.

12 Q. Is it generally fair to say that with the exception of the
13 privileged documents and the trash bag issue that you
14 understood that basically it was up to the agent's discretion
15 what they did or didn't take in any particular instance, based
16 on the materials they had with them and whatever instructions
17 you had given them prior to the search?

18 A. Yeah. It was up to their discretion to act in good faith,
19 to follow what was in the warrant. Yes. Make reasonable
20 efforts to follow what was in the warrant.

21 MR. SIEGAL: I'm just skipping some stuff, your Honor.
22 To try to move it along. If you will just give me a moment to
23 look at my outline.

24 THE COURT: Go ahead.

25 Q. Now, you testified a little bit earlier about the meeting

H1NMWEY3

Massey - cross

1 on the 24th at which you recall giving a basic description to
2 the search team about what the investigation was about, right?

3 A. It's a vague recollection of the meeting. I have a clear
4 recollection of what I thought in advance of the meeting as it
5 happens.

6 Q. But you don't have any recollection sitting here today
7 about what you actually said, right?

8 A. I don't have a recollection of what I actually said. Based
9 on my practice I can tell you almost certainly what I would
10 have said, but I don't recall the words I used.

11 Q. You didn't write a script for that speech in advance,
12 right?

13 A. I don't recall.

14 Q. As far as you know, there is no notes of anything that was
15 said?

16 A. If it hasn't been found on the system, then -- I left my
17 notes and I left -- anything I would have prepared like that
18 would have been left on the system if I prepared a special
19 script for it.

20 Q. As far as you recall, you didn't ask anybody to take any
21 notes of what was said at the meeting, right?

22 A. I don't recall whether I did that. It would have been a
23 little bit unusual to tell the agents they should take notes.
24 They are adults. And in that kind of setting I don't know
25 whether I would have said that, instructed them to take notes.

H1NMWEY3

Massey - cross

1 I tend to doubt it.

2 Q. Other than the warrant, do you recall anything else being
3 handed out to the agents at the meeting?

4 A. I don't recall what was handed out at the meeting.

5 THE COURT: Mr. Massey, was it your practice generally
6 to make notes in advance of such a meeting?

7 THE WITNESS: Your Honor, it was generally my practice
8 to make notes in preparation for meetings. In a situation like
9 this I can well imagine that I wouldn't have felt like I really
10 needed notes because I had a search warrant application of
11 great length to talk from, and that would have essentially
12 served as kind of talking points for me to flip pages and see
13 the headings and then summarize to the agents.

14 Going back to my earlier testimony about the practice
15 in the case of a search warrant, in the case of a search
16 warrant, an actual script would be written, but I think the
17 script would be largely cut and paste from the affidavit. So
18 in this case it may well be that I didn't need to draft notes
19 or they exist, but they can't be identified as such because I
20 didn't write at the top, notes for meeting on such and such a
21 date.

22 Q. It's fair to say you did not read to them the 97-page
23 affidavit of Mr. Komar, right?

24 A. I doubt that very much. It would have taken a very long
25 time.

H1NMWEY3

Massey - cross

1 Q. If I told you that the records seem to reflect that the
2 meeting occurred at 4 p.m. on the 24th, would that surprise
3 you?

4 A. It doesn't surprise me. I don't have a reaction to that
5 time.

6 Q. The search was going to be conducted the very next morning,
7 first thing in the morning, right?

8 A. It was conducted on the 25th and it was conducted in the
9 morning, yes.

10 Q. Do you recall that you handed out copies of the affidavit
11 to the searching agents?

12 A. I don't recall one way or the other.

13 Q. Did you observe any of the agents read the 97-page
14 affidavit?

15 A. I certainly observed Agent Komar read the affidavit.

16 Q. Any of the other ones?

17 A. I don't recall one way or the other.

18 Q. As far as you know, no agent wrote an FBI 302 report about
19 what was said at the meeting, right?

20 A. I don't believe I ever saw an FBI 302 about the meeting.

21 Q. I take it to the extent you may have prepared a script for
22 the meeting, that's not something that you would have or did
23 show to Magistrate Judge Dolinger, right?

24 A. I'm not assuming I did create a script. Based on my
25 practice and the way I knew I operated at that time, I would

H1NMWEY3

Massey - cross

1 have talked from the affidavit. So the affidavit was shown to
2 Judge Dolinger.

3 Q. Now, you testified at some point you began to receive
4 certain of the evidence that had been seized to look at after
5 the team had done some work?

6 A. Yes.

7 Q. One of the agencies with whom you shared some of the seized
8 electronic evidence was the Securities and Exchange Commission,
9 right?

10 A. Yes.

11 Q. The SEC was jointly investigating this case with you at the
12 time?

13 A. I wouldn't use the word joint.

14 Q. Were they conducting an investigation at the same time into
15 similar topics?

16 A. They were conducting their own investigation into the same
17 matters.

18 Q. In fact, after you left the government, the SEC filed its
19 own separate case in 2015, right, relating to similar topics to
20 the indictment in this case?

21 A. I saw that, yes.

22 Q. Before you shared search materials with the SEC, you didn't
23 ask Mr. Wey or Mrs. Wey for their permission to do that, did
24 you?

25 MR. FERRARA: Objection. Relevance.

H1NMWEY3

Massey - cross

1 THE COURT: You want to make a proffer, counsel.

2 MR. SIEGAL: Your Honor, I am going to ask him about
3 some communications with the SEC.

4 THE COURT: Why?

5 MR. SIEGAL: Part of the 3500 material. Because it
6 goes to his understanding of the scope of the warrant. Your
7 Honor will see when I put the documents in front of him. So
8 I'm happy to make the proffer to your Honor. If you want to
9 take a break, I can do it.

10 THE COURT: You are saying you don't want to do it in
11 the hearing of the witnesses. Is that your point?

12 MR. SIEGAL: No. It's fine to do it in front of the
13 witness.

14 THE COURT: Go ahead. Go ahead and make a proffer,
15 generally. I'm not looking for exactly what you are going to
16 do. As I sit here, I don't know why you would ask about that.

17 MR. SIEGAL: Well, your Honor --

18 THE COURT: While you are doing that, someone in the
19 courtroom has a phone that's pinging. I'm amazed. Does anyone
20 know whose phone it is?

21 I'll give my warning again. Maybe everyone can just
22 take a moment and check all of their devices. If I hear a
23 phone sound again as though it's receiving an e-mail and I can
24 determine who has that phone, it will be confiscated.

25 Go ahead, Mr. Siegal. It's distracting. I don't mean

H1NMWEY3

Massey - cross

1 to take it out on you, Mr. Siegal.

2 MR. SIEGAL: Your Honor, the government's position
3 here is that the government acted in good faith in both its
4 execution of the search warrants and in treating the electronic
5 evidence after it was seized.

6 If your Honor takes a look at -- it's a little bit
7 difficult because the binders are so thick. 3504-13 is a
8 compilation of e-mails. It's your Honor's binder relating to
9 3500 material specific to Mr. Massey. It's quite a ways
10 through the set there.

11 THE COURT: They are Bates --

12 MR. SIEGAL: There are Bates numbers, your Honor, but
13 I don't know that they are consecutive. In this particular
14 instance I'm looking at a document that's Bates number Wey
15 000310.

16 MR. FERRARA: The numbers get lower as your Honor goes
17 further back, so it's reversed. They are also in date order.
18 If Mr. Siegal wants to give us a date --

19 MR. SIEGAL: It's May 3, 2013, your Honor.

20 THE COURT: You said Wey 00315?

21 MR. SIEGAL: I'm sorry. 310, your Honor.

22 Q. This is a memo that Mr. Massey wrote to the file after he
23 became concerned. I'm just summarizing, your Honor, for the
24 purposes of my proffer here. I'm not trying to put words in
25 the witness' mouth, but I will ask him about it. In which he

H1NMWEY3

Massey - cross

1 realizes that he has sent a disk of materials from the
2 electronic production to the SEC, although no agent, prior to
3 when he sent it, had checked to see whether everything on that
4 disk of electronic data was responsive to the warrant. The
5 disk was at the SEC for at least a month before anybody in the
6 U.S. Attorney's Office questioned whether this was an
7 appropriate way to handle the electronic search material.

8 So the U.S. Attorney's Office attempted to get the
9 disk of data back from the SEC because in the interim an agent
10 that Mr. Massey asked to look at the disk determined that there
11 could be personal nonresponsive information on the disk. They
12 attempted to get it back. The SEC declined to return the disk.
13 And then Mr. Massey wrote a memo to the file in which he argues
14 effectively to himself or to the file why although the agent
15 determined that materials on the disk might not be responsive
16 to the warrant, why he believes it is. I want to question him
17 about that.

18 MR. FERRARA: Your Honor, I don't think this goes to
19 the actual question here, which is whether -- the good-faith
20 analysis here or the reasonableness analysis was -- I think
21 there is a couple of different potential parts. Was the
22 government sort of just maintaining the evidence, not doing
23 anything with it. Was the government being diligent in
24 searching the evidence, moving through the evidence in an
25 attempt to get to the bottom of what was pertinent and what was

H1NMWEY3

Massey - cross

1 not pertinent. Did the government sort of maybe double dip, go
2 back in and look for things outside the warrant later, things
3 of that nature. The fact that certain nonpertinent documents
4 may have been shared with the SEC, an unrelated party here, is
5 outside the scope of what the Court is being asked to decide
6 and is not part of the reasonableness analysis.

7 THE COURT: Overruled.

8 Q. Putting aside for a moment the question, Mr. Massey, about
9 whether you asked for permission to send electronic search data
10 to the SEC, is it fair to say that at some point it occurred to
11 you that contained in some materials you gave to the SEC there
12 might be data that might not have been responsive to the search
13 warrants but that was still at that point in possession of the
14 FBI?

15 A. Yes.

16 Q. And this was more than a year after the search warrants
17 were executed, right?

18 A. May 3, 2013?

19 Q. Yes.

20 A. Is more than a year after the search was executed.

21 Q. So at that point am I correct in understanding you asked
22 the FBI agent or an FBI agent to check a particular disk of
23 information you had already given to the SEC more than a month
24 earlier?

25 A. I believe that's right. But I don't think -- if it's Wei

H1NMWEY3

Massey - cross

1 Mon, she was not an agent. She was an analyst. I believe I
2 asked them to check that.

3 Q. And the FBI analyst reported back to you that in fact
4 documents of a personal nature were contained within that disk
5 that you had given to the SEC, right?

6 A. I think that's right. I have not had time to read this
7 entire memo. Are you asking me to read it?

8 Q. I'll help you out, if you don't mind. If you can look at
9 the third paragraph there, do you see that it says on April 23
10 I asked the FBI analyst, who has looked at the raw FBI Excel
11 disk, whether she saw anything of a purely personal nature
12 there. You see that?

13 A. I see that. I'm reading it now.

14 Q. In fact, she had told you that there were spreadsheets
15 reflecting Wey family medical issues on that disk, right?

16 A. Certainly says that and I wouldn't have written it if it
17 weren't true.

18 Q. Am I correct that you actually, once you learned that,
19 tried to get the SEC to either destroy the disk or return it to
20 you, right?

21 A. Yes.

22 Q. And they told you they couldn't do that and wouldn't do
23 that, right?

24 A. I think they told me that their -- I think they initially
25 agreed to do that and then they told me that their regulations

H1NMWEY3

Massey - cross

1 prevented them from destroying or returning documents, that the
2 federal regulations prohibited that. I think they put it in a
3 box, put it in a safe, locked it away and sort of separated it
4 from their investigation.

5 Q. But at that point it had already been in the SEC's
6 possession for a month, right?

7 A. I don't remember the amount of time. I'm not disputing
8 whatever their documents suggest. I just don't recall.

9 Q. I think the memo reflects the timeline, so I won't bother
10 you with those questions. But is it fair to say that in the
11 memo that you wrote to the file on this issue, you wrote:

12 These two are within the scope of the warrants because Wey's
13 tax returns are relevant documents because we believe he
14 committed tax fraud and he claimed large medical deductions
15 most years. Do you see you wrote that language?

16 A. I see that.

17 Q. Sir, where in Special Agent Komar's 97-page search warrant
18 affidavit is there any assertion that Ben Wey was committing
19 tax fraud by overdeducting for medical expenses?

20 A. As I sit here now, I don't recall it saying that. I do
21 recall some reference in it to tax information or tax returns.
22 I just don't recall what it was in relation to.

23 Q. There is no reference on the front page of the search
24 warrant, as we established earlier, to any tax fraud, right?

25 MR. FERRARA: Objection. 403.

H1NMWEY3

Massey - cross

1 A. If there is no reference --

2 THE COURT: Just a moment.

3 THE WITNESS: I'm sorry, your Honor.

4 THE COURT: Overruled.

5 Q. Indeed, just taking a look for a moment at the front page
6 of Government Exhibit 2, which is the application for search
7 warrant, that's a document where you did include certain code
8 section citations, right, Mr. Massey?

9 A. Yes.

10 Q. And none of that is a reference to any tax fraud section,
11 is it?

12 A. You are right, yes. You are correct.

13 Q. And there is nothing in Agent Komar's affidavit describing
14 probable cause to search or seize evidence of overdeductions
15 for health expenses, is there?

16 A. I believe you are right.

17 Q. Yet in your mind when you wrote this memo you believed that
18 the warrants covered that type of information, too?

19 A. If I said I believed it I must have believed it. It's an
20 internal memo.

21 Q. Just to be clear, there is nothing about overdeductions for
22 health expenses in Mr. Garwood's affidavit seeking the search
23 warrant for the home either, right?

24 A. No. But in both affidavits there was a description of the
25 funds from overseas from Tianyi Wey being transferred to a

H1NMWEY3

Massey - cross

1 personal account of Michaela Wey.

2 Q. Sir, does that have anything at all to do with deducting
3 for health expenses?

4 A. On its face? If you want me to make an argument about how
5 it could, I could. On its face it does not relate to
6 deductions for medical expenses.

7 Q. And you made a point in your direct testimony that this was
8 a security fraud squad that was doing the investigation, right?

9 A. Yes.

10 Q. And that it was clear that this was, in your mind, from the
11 search warrant a securities fraud investigation, right?

12 A. Yes.

13 Q. Not a health care fraud related investigation, right?

14 A. Correct.

15 THE COURT: Are you moving this, counsel?

16 MR. SIEGAL: Yes. I'm going on, your Honor.

17 Mr. Ferrara has reminded me, your Honor, that I would
18 like to move just the one page, way 000310 in evidence.

19 MR. FERRARA: It's a two-page document, your Honor.
20 No objection.

21 THE COURT: You want to mark it, Mr. Siegal.

22 MR. SIEGAL: Yes. We will mark it as Defense Exhibit
23 4.

24 THE COURT: From the 3500 material for Mr. Massey,
25 which is 3504, two-page document that begins at Wey 000310 and

H1NMWEY3

Massey - cross

1 it's two pages long will be marked as Defendant's 4 and without
2 objection admitted.

3 (Defendant's Exhibit 4 received in evidence)

4 MR. SIEGAL: Shall I hand this to the court reporter
5 or the clerk?

6 THE COURT: No.

7 MR. SIEGAL: I am just trying to skip a bunch of
8 stuff, your Honor, if your Honor would give me a moment.

9 THE COURT: OK.

10 Q. Let's turn to the review of the electronic documents. Am I
11 correct in understanding that the plan was at the time the
12 search was conducted that CART was going to load electronic
13 data seized from the search into a review platform?

14 A. Yes.

15 Q. So that the FBI could then begin conducting its review?

16 A. Yes.

17 Q. And are you aware that in the course of the searches of
18 both the apartment and the office that somewhere between six
19 and eight cell phones and 19 other electronic storage devices
20 were collected in the course of the search?

21 A. As I sit here now, I don't remember the exact number.

22 Whatever the documents say I'm sure is accurate.

23 Q. I take it you weren't surprised that the searches of the
24 office of the business and of somebody's home resulted in the
25 collection of a number of electronic devices, right?

H1NMWEY3

Massey - cross

1 A. No, I was not surprised by that.

2 Q. This is what you anticipated.

3 Did you also anticipate in advance of the search that
4 you would need a taint team to review electronic documents for
5 potential privilege?

6 A. I think we probably -- I probably did assume that, but I
7 don't specifically recall. I have to reread the application to
8 answer that question. Typically in the application there may
9 be a need for a taint team.

10 Q. Is it fair to say that at the time that you sent the agents
11 out to do the search you anticipated that there would be at
12 least two projects that would need to be accomplished with
13 respect to any electronic evidence? One would be a review for
14 potential privilege and the other would be a review for
15 responsiveness to the warrant.

16 A. I believe that's right.

17 Q. And did you anticipate at the time the searches were
18 executed that those projects might take a significant amount of
19 time and effort?

20 A. I don't recall whether I had a belief or view as to how
21 long it might take. I'm sure I was aware that there are often
22 delays because the FBI had its own -- various priorities.

23 Q. I take it that you understood at the time that neither of
24 those projects could begin until CART loaded the data onto a
25 platform, right, to a review platform?

H1NMWEY3

Massey - cross

1 A. As to the electronic records, correct.

2 Q. Are you aware that the electronic data was not even loaded
3 up to a platform until April of 2012?

4 A. As I sit here now, I'm not aware of when it was uploaded.

5 Q. After everything was finally loaded, a taint team began to
6 run searches to segregate privileged materials, correct?

7 A. Yes.

8 Q. That was the process that you were talking about in your
9 direct testimony about the list of attorneys?

10 A. Yes.

11 Q. And was it your understanding that you couldn't begin to
12 review materials for responsiveness until the taint team had
13 done its work?

14 A. No. It wasn't my view. Depends what you mean by done its
15 work. As to a particular document, for instance, a
16 spreadsheet, I have the recollection of getting spreadsheets,
17 one or more spreadsheets earlier than other information, while
18 they were probably still working on the rest of it. Because it
19 had been cleared for privilege and cleared for responsiveness.

20 Q. Apart from a couple of items that you received, do you
21 recall that the process of reviewing the search material for
22 responsiveness was going on in some substantial form prior to
23 May of 2013?

24 A. We had a couple -- I don't know how many -- documents I
25 received or electronic files I filed. I don't know if it was a

H1NMWEY3

Massey - cross

1 couple. But, I'm sorry, the rest of your question is -- could
2 you repeat the rest of your question.

3 Q. The taint process wasn't completed, was it, until May of
4 2013?

5 A. I don't recall when it was completed, as I sit here now.

6 Q. You recall that Agent Komar handed off the investigation to
7 Agent McGuire some time in early 2013?

8 A. I do recall that happened. I don't recall exactly when.

9 Q. And you recall that you gave Agent McGuire that list of
10 search terms that we saw earlier. That was some time in May of
11 2013?

12 A. It was dated May 3, yes.

13 Q. But you grew concerned about the pace of the taint team's
14 review at some point in the summer of 2012, didn't you?

15 A. Whether it was summer of 2012, I don't recall. I do
16 recall -- I don't know what you mean by concern. I wanted
17 them -- I prefer that they move faster. Whether it was concern
18 or not, I'm not sure.

19 Q. Is it your recollection that the taint team wasn't even
20 briefed on how the review software worked until June of 2012?

21 A. I don't recall the date. I am not sure if I ever knew the
22 date. I don't recall the date, that date.

23 Q. As far as you're aware, do you know whether anyone on the
24 investigation team did any review of the electronic materials,
25 either for privilege or responsiveness, between January 25,

H1NMWEY3

Massey - cross

1 2012, when it was seized, and June 2012?

2 A. As I sit here, I don't recall.

3 Q. Now, you mentioned an opinion of Judge Irizarry in the
4 *Metter* case from May 2012. Is it fair to say that you became
5 aware of that opinion shortly after she issued it in May?

6 A. I don't recall when I became aware of it.

7 Q. Let's do this by showing you the document. If you can look
8 in your 3500 binder, please. I am going to ask you go maybe 15
9 pages back in the binder.

10 MR. SIEGAL: Your Honor, I'm referring now to 3504
11 Bates page, Wey 001330.

12 THE COURT: You are saying it's about 15 pages from
13 the front of the exhibit?

14 MR. SIEGAL: No, your Honor.

15 THE COURT: From where we were.

16 MR. SIEGAL: The date is August 29, 2012 and
17 Mr. Ferrara has reminded me that these are in chronological
18 order.

19 THE COURT: You said it's Wey 01330.

20 MR. SIEGAL: Yes, your Honor.

21 A. I see Wey 1330.

22 Q. This is a communication from you to Marc Berger. Am I
23 correct in understanding that he was your supervisor at the
24 time?

25 A. Yes.

H1NMWEY3

Massey - cross

1 Q. And is it fair to say that by this time you were concerned
2 about the pace at which the electronic document review was
3 going in this investigation?

4 A. I don't remember whether concern was -- I don't remember
5 whether I was, quote, concerned. I remember being -- I
6 remember wishing that they were working faster and I remember
7 enlisting -- trying to enlist help from Marc Berger on that
8 point.

9 Q. In fact, Marc Berger actually had a conversation with Agent
10 Komar's supervisor about the pace at which the review was
11 going, right?

12 A. I vaguely recall that.

13 Q. That's what this documentation refers to? That's what this
14 set of e-mails refers to?

15 A. I don't know. I have not had time to read the whole
16 e-mail.

17 Q. I'll just direct your attention to the bottom half of the
18 page. Do you see where there is a bracketed sentence or two
19 that says: As incentive to keep this process going, we have
20 the recent EDNY opinion suppressing 50 plus hard drives for
21 failure to review them quickly enough. Do you see that?

22 A. I see that.

23 Q. Is that the Judge Irizarry opinion you were referring to
24 earlier?

25 A. Yes.

H1NMWEY3

Massey - cross

1 Q. You see where it says: We seized the NYGG hard drives etc.
2 seven months ago and this privilege review is nowhere near
3 finished. Do you see that?

4 A. I do.

5 Q. The *Metter* decision wasn't the only thing you were worried
6 about at that point in time. There were other decisions in the
7 Southern District as well. The *Debbi* decision, were you aware
8 of that one?

9 A. I don't remember. I don't remember that case by that name.

10 Q. Despite the fact that you raised this issue with your
11 supervisor in August of 2012, it's true that in fact the
12 privilege review itself dragged on for another nine months,
13 right?

14 A. Again, I don't recall when the privilege review had ended.
15 Again, I think I received some documents before the privilege
16 review, and we also had the hard copy documents.

17 THE COURT: Mr. Siegal, how much longer with this
18 witness?

19 MR. SIEGAL: Give me a moment to look, your Honor.

20 Q. Between January of 2012 and May of 2013 --

21 THE COURT: The question was, how much longer with
22 this witness? And then you started to give me a year range,
23 which caused some concern, especially for Mr. Massey, I
24 suspect.

25 MR. SIEGAL: Maybe half an hour, your Honor.

H1NMWEY3

Massey - cross

1 THE COURT: We will take a lunch break for about 45
2 minutes. See if what you can do to tighten it with the
3 guidance you have been given in the morning, and we will return
4 in 45 minutes.

5 MR. SIEGAL: Sorry, your Honor. Before we break, your
6 Honor, I would like to move in evidence the page I was just
7 referring to.

8 MR. FERRARA: We don't object to the entire document
9 being entered. It's a three-page document. We don't object to
10 the entry of the entire document.

11 THE COURT: Marking -- Mr. Siegal, doing your work
12 here for you -- as Defendant's 5 from Mr. Massey's 3500
13 material Wey 1330, which is a three-page document. Without
14 objection, that is admitted.

15 (Defendant's Exhibit 5 received in evidence)

16 THE COURT: Enjoy your break.

17 (Luncheon recess)

18 (Continued on next page)

H1NAAWEI4

Massey - Cross

1 AFTERNOON SESSION

2 1:30 p.m.

3 THE COURT: Please be seated.

4 I'm reminding Mr. Massey that he is under oath.

5 MR. SIEGAL: Your Honor, before we move to a different
6 topic I'd just like to show the witness one additional document
7 regarding the timeline and offered in evidence.

8 Q. So, if I could point you, Mr. Massey, to an e-mail dated
9 January 15, 2013. It's in that same compilation of documents
10 of the 3500 material which for the record is 3504-13 and the
11 Bates number page I am referring to is Wei 000651.

12 A. I see it.

13 THE COURT: You are marking that as Defendant's six?

14 MR. SIEGAL: Yes.

15 THE COURT: For identification?

16 Q. That's an e-mail that you wrote to your supervisor, Mark
17 Burger, right?

18 A. Yes.

19 MR. SIEGAL: Your Honor, I'll offer this document in
20 evidence and just ask him one question about it.

21 MR. FERRARI: No objection.

22 THE COURT: It's marked as Defendant's Six. It's
23 admitted which is from the 3500 material Wei 651 and it's how
24 many pages?

25 MR. SIEGAL: Just the one page.

H1NAAWEI4

Massey - Cross

1 THE COURT: Single page, thank you. It is admitted.

2 (Defendant's Exhibit Six received in evidence)

3 BY MR. SIEGAL:

4 Q. Mr. Massey, do you see in that e-mail that you write the
5 FBI has now started reviewing the electronic records after a
6 long delay; do you see that?

7 A. Yes.

8 Q. And that was almost a year after the electronic evidence
9 had been seized?

10 A. Yes.

11 Q. Now, on direct you referred to a list of search terms. I'd
12 like to direct your attention to that list, if I could. The
13 document in evidence is Government Exhibit 19, if you could
14 look at that one, please.

15 A. Government 19?

16 Q. Yep.

17 A. I have 19.

18 Q. And that you said it was a list prepared by you in or about
19 May, the beginning of May 2013?

20 A. I believe so, yes.

21 Q. Am I correct in understanding that the point of this list
22 was to help Special Agent McGuire search through the electronic
23 evidence for files that were responsive to the search warrant?

24 A. Yes, for the remaining files, yes. I said, I think before
25 this time I had received some documents but yes.

H1NAAWEI4

Massey - Cross

1 Q. But the objective, if I'm clear, is use these search terms,
2 what you are doing is trying to find any electronic evidence
3 that which is responsive to the warrants, right?

4 A. Yes.

5 Q. Now, is it fair to say that this list contains a number of
6 names that are not in Exhibit B to the search warrants?

7 A. It's a longer list I think. If you say so. I mean, I'd
8 have to compare them side-by-side.

9 Q. Are you aware, sir, that the name Ahmed Mohadin which is on
10 the front page of Exhibit 9, that's not among the names in
11 Exhibit B to the search warrant?

12 A. If it -- I mean, I take your word for it.

13 Q. And Dogan Erbek, that is another name in this list but not
14 on the list in Exhibit B to the search warrants?

15 A. OK.

16 Q. Would you be surprised if I told you that the number of
17 names on this list is more than a hundred longer than Exhibit
18 B?

19 MR. FERRARI: Objection; relevance. Objection; 403.

20 THE COURT: Overruled. But this will be the end of
21 the line of questioning.

22 Q. Sir --

23 THE COURT: Overruled.

24 You may answer, Mr. Massey.

25 A. I am sorry. No, I would not be surprised that the number

H1NAAWEI4

Massey - Cross

1 is a hundred more than the search warrant application.

2 Q. Did you ever receive permission from the magistrate judge
3 to search the electronic data seized in 2012 with this list of
4 names as opposed to list of names in the search warrant,
5 Exhibit B?

6 MR. FERRARI: Objection.

7 THE COURT: Grounds?

8 MR. FERRARI: It's misrepresenting what the
9 testimony's been. Mr. Massey testified on direct that he
10 compiled that list based on the warrant and it was an
11 extrapolation from things in the warrant. So, the idea that he
12 needed to get permission is simply argumentative.

13 THE COURT: Well, as I sit here I can't recall if this
14 was the same point of comparison, but any way, overruled and
15 then you'll move on.

16 A. I don't believe this was submitted to the magistrate judge.

17 Q. Now, with respect to specifically Mr. Dogan Erbek, you were
18 aware of the existence of him prior to when you made the
19 application for the search warrant in January of 2012, weren't
20 you?

21 A. It's very hard to remember when I became aware of Dogan
22 Erbek.

23 Q. If I could direct your attention to the same collection of
24 e-mails in the 3500 material to a Bates number documented Wei
25 003395 which is an e-mail dated January 12. Do you see that?

H1NAAWEI4

Massey - Cross

1 A. Twelve of what year?

2 Q. I am sorry. Of 2012.

3 A. How far back in the stack is it?

4 Q. It is actually not very far back, 350413, but it's a long
5 way from the tab, about five pages back from the blue sheet.

6 A. OK. I am sorry. January what 2012?

7 Q. January 12, 2012, there's like a three e-mail chain.

8 A. I see that.

9 Q. This is an e-mail exchange between you and the case agent
10 at the time?

11 A. What's the Bates number.

12 Q. Sorry 003395?

13 A. I see it. Yes. This is an e-mail exchange between myself
14 and Agent Komar.

15 Q. And this specifically is discussing somebody named Dogan
16 Erbek and Sarah Dogan Erbek?

17 A. Yes.

18 Q. Do you know that he is a co-defendant in this case?

19 A. I do know that.

20 Q. So, you were aware of his existence at the time and
21 specifically you were also aware of some connection to him and
22 this investigation, right?

23 A. Yes.

24 Q. These e-mails are in connection with the same
25 investigation?

H1NAAWEI4

Massey - Cross

1 A. Yes, enough to write an e-mail about it.

2 Q. But you didn't have probable cause to search for documents
3 relating to Dogan Erbek anywhere in the affidavit that you
4 submitted two weeks later, right?

5 A. Well, I don't mean to quibble with you but as you asked
6 that question, I don't agree with the way you asked it.

7 Q. Did you assert that you had probable cause in the affidavit
8 that Komar submitted relating to Dogan Erbek?

9 A. If that name is not in there, it is not in there.

10 Q. And he is not on the list either, is he, Exhibit B to the
11 search warrant?

12 A. I take your word for it. I'd have to look for it.

13 Q. But here 15 months later you've added him to the search
14 term list, right?

15 A. That's correct.

16 Q. I'd like to have you look please at another e-mail chain.

17 MR. SIEGAL: Pardon me, your Honor. It's actually I
18 believe --

19 Q. I'd like to direct your attention to the front of the 3500
20 binder, the section for Special Agent Komar.

21 MR. SIEGAL: Sorry, your Honor, before I do that I'd
22 like to move into evidence the e-mail from January 12, 2012
23 that I just went through.

24 THE COURT: Which is Bates what, counsel? If you
25 could just in a consistent way when you start on a document

H1NAAWEI4

Massey - Cross

1 identify mark it for identification and then you can move in
2 that exhibit.

3 MR. SIEGAL: Yes, your Honor.

4 THE COURT: Thank you.

5 MR. SIEGAL: It's Wei 003395. That's the Bates number
6 for the January 12, 2012 exchange of e-mails.

7 THE COURT: And you want to mark that as what?

8 MR. SIEGAL: Defense Exhibit 7, your Honor.

9 THE COURT: How many pages is it?

10 MR. SIEGAL: Just the one page.

11 THE COURT: Without objection.

12 MR. FERRARI: Without objection.

13 THE COURT: Been marked as Defendant's 7 is admitted.

14 (Defendant's Exhibit Seven received in evidence)

15 BY MR. SIEGAL:

16 Q. Now, if you would look please in the front of the binder
17 there's a tab for 3500 material related as to Komar?

18 A. I see it.

19 Q. And within that section there's a collection of e-mails
20 that begins 350111 that's what we've marked for Komar. And
21 then it's a collection of e-mails that starts with the
22 January 4, 2012 e-mail.

23 A. I see the January 4, 2012 e-mail.

24 Q. OK. If you would go about maybe 15 or 20 pages in you
25 would find the e-mail on January 12, 2012 e-mail exchange

H1NAAWEI4

Massey - Cross

1 between you and Special Agent Komar, then as well that has
2 Bates number 003405?

3 A. January 12, 201 e-mail page 3405, I have that.

4 MR. SIEGAL: I'd like to offer that, your Honor.

5 THE COURT: I honestly don't know where we are.

6 MR. SIEGAL: You don't have the document in front of
7 you?

8 THE COURT: I don't know. You need to describe it
9 again.

10 MR. SIEGAL: Yes.

11 THE COURT: We're in the 3500 material for Mr. Komar
12 3501 --

13 MR. SIEGAL: 11, which is a composite of a bunch of
14 e-mails for Mr. Komar.

15 THE COURT: And the Bates are 3450, how many pages
16 3405?

17 MR. SIEGAL: I'm not referring to that exhibit for
18 purposes of this question. I am referring to a page 15 pages
19 in and they are in chronological order. So this would be a set
20 of e-mails on January 12, 2012, Wei 003405.

21 THE COURT: January 12, 2012 which begins 3410.

22 MR. FERRARI: About five pages past that, your Honor.

23 THE COURT: Wei 3405.

24 MR. SIEGAL: Yes. Are we all there together now?

25 THE COURT: I'm there.

H1NAAWEI4

Massey - Cross

1 MR. SIEGAL: I'd like to offer this, your Honor, as
2 defense eight.

3 MR. FERRARI: I don't understand the relevance, your
4 Honor.

5 MR. SIEGAL: Well, it's an e-mail exchange between
6 yourself and Mr. Komar, right?

7 A. Yes.

8 Q. And in it it references to somebody named Teresa Ungerman;
9 do you see that? And Otakar Ungerman, do you see that?

10 A. I see that in Agent Komar's e-mails to me.

11 Q. Are those names that are appearing anywhere on Exhibit B of
12 the search warrant affidavit?

13 A. I don't recall.

14 Q. But they do appear on Government Exhibit Nine, right?

15 A. It's not open in front of me.

16 Q. If you could take a look please Government Exhibit Nine is
17 in alphabetical order?

18 A. I'm not disputing it. I just didn't see it. I don't have
19 it in front of me. Government Exhibit Nine is the warrant.

20 MR. FERRARI: For the sake of time, if it's there or
21 not your Honor will have the exhibit in front of you.

22 MR. SIEGAL: Will you take my representation?

23 MR. FERRARI: He doesn't have to, your Honor, because
24 the exhibit is in evidence.

25 THE COURT: Well, this one is not yet in evidence,

H1NAAWEI4

Massey - Cross

1 3405. So, you withdraw your relevance objection?

2 MR. FERRARI: That's fine, your Honor.

3 THE COURT: I will admit Defendant's Eight Wei 3405
4 the January 12, 2012 e-mail.

5 (Defendant's Exhibit Eight received in evidence)

6 Q. So, these are some additional names that you were aware of
7 back in January 2012 that you did not include in a search
8 warrant but yet then later added to your search term list,
9 right?

10 A. If that's what the two lists show then you're right.

11 Q. So, I'm sorry, Mr. Massey, was it your understanding in
12 2013 that you could have the agents search through all the
13 Weis' electronic materials for people and entities that you
14 didn't include as people and entities for whom you had probable
15 cause in the warrant?

16 A. If they were sufficiently closely connected to the names in
17 the warrant and the PC covered it I believe, I don't honestly
18 remember my thought process exactly but there certainly had to
19 be a close tie to the warrant application and the warrant, very
20 close tie.

21 Q. Based on who's judgment, yours?

22 A. I think not only mine. I think I asked the agent to review
23 that as well.

24 Q. So, you and the agent decided in May 2013 that you were
25 just going to add names to the lists that you never

H1NAAWEI4

Massey - Cross

1 demonstrated probable cause for in the search warrant?

2 MR. FERRARI: Objection; misrepresents the testimony,
3 argumentative.

4 THE COURT: Just a second. I'll sustain that.
5 Rephrase.

6 And again, Mr. Siegal, if we're going to get through
7 this you've got to get to the point you need and I'm giving you
8 room to, for example, note that someone whose on the later list
9 and wasn't on the earlier one and then ask your question but
10 you just don't need to do the summation and I'm not going to
11 allow it any more.

12 Q. At the time you left the U.S. Attorney's Office in 2013,
13 Mr. Massey, were you, as far as you were aware, was the FBI
14 still in possession of all the electronic data that had been
15 seized from the Weis' apartment at the offices of New York
16 Global Group?

17 A. I don't know if I knew that. At some point I became
18 recused. I recused myself from the investigation after I left
19 the office.

20 Q. But as far as you know none of it was purged or deleted
21 during that time, right?

22 A. During the time before I became recused? Or before I left?

23 Q. Before you left?

24 A. As I sit here now I don't have any -- I don't have a
25 recollection about purging or deleting files.

H1NAAWEI4

Massey - Cross

1 Q. Mr. McGuire was doing an exercise in May of 2013 to search
2 for electronic files responsive to the warrant, right? That
3 was what you understand his exercise was?

4 A. Yes.

5 Q. And regarding items he determined were not responsive to
6 the warrant, did you instruct him at any time to delete or
7 purge any of that nonresponsive data?

8 A. I don't recall giving that instruction. I think the
9 process was -- I'm not sure if the process had ended at that
10 point. By the time I became recused the process may have still
11 been going on. I don't remember.

12 Q. Sir, on direct you spoke a little bit about some of the
13 substance of what was in the affidavit of Mr. Komar. Among the
14 things you testified about, was the passage in the affidavit --
15 and I'm going to refer you to Government Exhibit two, page 43,
16 paragraph 25.

17 A. OK. I see that.

18 Q. In that the affidavit as you drafted it says I am aware of
19 no public information that could explain such a significant
20 rise in the marketplace valuation of these stocks.

21 A. I see that.

22 Q. And that was a reference to in particular Deer and Sparky?

23 A. Yes.

24 Q. Among the public information that you reviewed at the time
25 did you review any market analyst reports?

H1NAAWEI4

Massey - Cross

1 A. I don't specifically remember but I believe I did. I
2 believe I would have. That's the kind of thing that I would
3 have looked at or asked the SEC to look at in the usual course.

4 Q. Did you see that multiple market analysts rated Deer at its
5 highest available rating?

6 A. Sorry. When you said "market data" I was thinking of sort
7 of stock carts but actual bought analyst reports probably
8 looked at the analyst reports as well. I'm not -- was aware
9 that Deer was rated highly by certain analysts at this
10 particular time. I don't recall. I do recall getting
11 different ratings at different times and it wouldn't have
12 changed my view at all to know that some analysts have rated it
13 as a buyout or performed and some of such rating.

14 Q. Did you review SEC filings for these companies in
15 connection with drafting this affidavit?

16 A. I believe I did.

17 Q. Did you notice the SEC filings, for example, Sparky had
18 recently fall of 2009 successfully completed a \$75 million
19 public offering?

20 A. I believe I was aware of the public offering history of
21 these companies.

22 Q. Did you see SEC filings at the time that showed that Deer
23 had successfully done a pipe financing of \$15 million in
24 September of 2009 and in issuance of \$75 million in new shares
25 in November of 2009?

H1NAAWEI4

Massey - Cross

1 A. I believe I knew that. I was following the public
2 offerings.

3 Q. Did you review the fact that the Shanghai and Shen Jeng
4 stock exchanges were up 35 percent in the fall of 2009?

5 A. I don't specifically remember. But as I said a minute ago,
6 I believe I would have looked at the stock charts and that
7 would include indices, which indices I don't know but I would
8 have sought to look at relevant index like China Small Cap
9 stocks or something like that.

10 Q. But you are saying -- did you look at what the
11 institutional ownership was in these securities during the fall
12 of 2009 as part of your review of publicly available
13 information?

14 A. I believe we looked at this sort of top institutional
15 shareholders to the extent that it was public and I think you
16 could see that you could see fidelity owned some shares and
17 with the big funds that's the type of information that we would
18 have looked at. Do I specifically remember that at this time?
19 It's hard to remember.

20 Q. With respect to the listing requirements --

21 MR. SIEGAL: If I may approach, your Honor?

22 THE COURT: Show counsel.

23 (Pause)

24 Q. Handing you, sir, what I'm going to ask to be marked as
25 Defense Exhibit Nine. Do you see that document?

H1NAAWEI4

Massey - Cross

1 A. Dated January 2017? I do see this document January 2017
2 NASDAQ initial listing, Exhibit 9.

3 Q. At the time that you were putting this search warrant
4 affidavit together did you have an opportunity to review the
5 listing requirements for NASDAQ for getting an issuer listed on
6 NASDAQ?

7 A. I certainly had the opportunity. I don't recall whether I
8 reviewed a document like this.

9 Q. Do you have any reason to believe that the listing
10 requirements with respect to the Round One Shareholder Exchange
11 listing requirements for NASDAQ?

12 MR. FERRARI: Objection.

13 THE COURT: Sustained.

14 Q. Sir, do you recall anything in the listing requirements
15 that you might have looked at at the time that said that
16 gifting of shares was prohibited by the listing requirements?

17 A. I don't recall that being in the NASDAQ rule one way or the
18 other.

19 Q. And do you recall anything in the listing requirements that
20 said there is some sort of substantive test relating to trading
21 or investment interests with respect to the Round Lot
22 Shareholder requirement?

23 A. I remember an SEC opinion on that point which is in the
24 affidavit and I remember having an understanding of the rule
25 which was not a, which had substance and meaning. And so, I

H1NAAWEI4

Massey - Redirect

1 think between the rule itself which was there for a reason and
2 the SEC opinion or in -- of the rule in the China Energy case I
3 believe the rule had meaning.

4 Q. So, the China Energy Case that you are referring to has
5 filed a complaint at the time, right, by the SEC?

6 A. It was a filed complaint. I think it may have been
7 resolved by that time but I can't recall.

8 MR. SIEGAL: We have nothing further for this witness,
9 your Honor.

10 THE COURT: Thank you. Redirect?

11 MR. FERRARI: Thank you, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. FERRARI:

14 Q. Before I forget, Mr. Massey, I just want to -- I just want
15 to make sure your testimony is clear on one point. On direct I
16 thought you had testified about thinking about, when I asked
17 you about thinking about preparing the agents for search you
18 had talked about thinking of it like a wiretap?

19 A. Yes.

20 Q. And then I believe when Mr. Siegal was asking you questions
21 you said, I thought to go back to my analogy but then you said
22 my analogy about search warrants and I would have had a script
23 with a search warrant. I just want to make sure whatever the
24 answer is the answer, but did you typically do scripts for
25 wiretaps or did you typically do scripts for search warrants?

H1NAAWEI4

Massey - Redirect

1 A. For wiretaps.

2 Q. That was just an analogy you were using for the search
3 warrants?

4 A. Yes. So, I misspoke when I suggested that I had previously
5 done scripts for search warrants.

6 Q. One other thing I want to make sure is clear is your best
7 recollection of how the privilege review was conducted
8 vis-a-vis the pertinent review and I want to understand your
9 best memory of did you wait until the privilege review was
10 entirely complete or did you believe that you were getting
11 documents on a rolling basis as they had been cleared?

12 A. My recollection is that I got some documents on a rolling
13 basis as they were cleared because it was very easy to tell
14 from certain spreadsheets for instance that they were
15 pertinent.

16 Q. Looking at Government Exhibit 18.

17 A. OK. I have it.

18 Q. There's a footnote at the bottom of that first page of that
19 exhibit?

20 A. I see it.

21 Q. And between that footnote and your memory were you
22 receiving names of -- did you receive names of lawyers from
23 plaintiff's counsel at all once between January and June of
24 2012 or was that also happening on a rolling basis?

25 A. I think it was happening on a rolling basis. I mean, the

H1NAAWEI4

Massey - Redirect

1 footnote certainly suggests it was happening on a rolling basis
2 that I got letters on two different occasions from --

3 Q. Based on this exhibit, can we conclude that you didn't have
4 a complete list of names from defense counsel until at least
5 the time of Mr. Levine's letter?

6 A. Of his June 4 letter.

7 Q. Which is government 17?

8 A. I mean, I'd have to compare that letter to his earlier
9 letter but I think you're right. I think this added some names
10 because you can see that in 19 -- sorry -- 18 in the
11 footnote -- yeah, I think his June letter supplemented some
12 earlier list.

13 Q. The last topic I want to touch on in this redirect is the
14 topic of the list of search terms you drafted for agent, for
15 the FBI to search for pertinence?

16 A. Yes.

17 Q. Calling your attention to Government Exhibit Three. And in
18 Government Three, Exhibit A, second page, paragraph 11, are you
19 with me?

20 A. I am.

21 Q. Does the warrant allow for the collection of identification
22 documents and other documents which may reflect the identities
23 of person listed in Exhibit B or persons affiliated with the
24 entities listed in Exhibit B?

25 A. It does.

H1NAAWEI4

Massey - Redirect

1 Q. And I want to show you what I've marked as Government
2 Exhibit 21.

3 MR. FERRARI: Your Honor, this is in the 3500
4 material. This is my last sort of couple questions here. This
5 is a May --

6 THE COURT: If I could ask a follow-up on that last
7 one.

8 Mr. Massey, do you recall how you would make a
9 decision as to whether to list the person or just rest with it
10 being a person affiliated with the entity?

11 THE WITNESS: At this time of drafting the warrant
12 application for the list?

13 THE COURT: The warrant application.

14 THE WITNESS: OK. I don't recall my exact thought
15 process. I mean there was a list of names that were known. In
16 some cases we -- and I think the warrant reflects that we
17 didn't know sort of who was who completely -- there were
18 nominees being used. There were names that were clearly part
19 of the fraud but we just didn't know how or in what way. I'm
20 not sure if that answers your Honor's question.

21 THE COURT: Well, I guess not quite. So, then how
22 would you decide is the suggestion then that if individuals
23 fell into the category would -- they would be individually
24 listed in the warrant application?

25 THE WITNESS: I think names that we knew and we knew

H1NAAWEI4

Massey - Redirect

1 the name, the idea would be to list the name at the time of the
2 warrant application. It may be that we left certain names out
3 when we were just aware of the name but didn't know what the
4 affiliation was. It was very hard to remember. It was five
5 years ago. That's what I recall.

6 MR. FERRARI: Your Honor, in your Honor's 3500
7 material for Mr. Massey, in that same group of e-mails towards
8 the back there's a May 3, 2013 e-mail.

9 And, Mr. Massey you'll have it too. I'm happy to hand
10 this up. In your 3500 material --

11 THE COURT: Toward the back.

12 THE WITNESS: What's the date?

13 MR. FERRARI: May 3, 2013 and when folks are close I
14 can read the Bates. So, May 3, 2013, and the Bates is 315 and
15 I've marked it as Government Exhibit's 21.

16 THE WITNESS: I can't find it.

17 (Pause)

18 THE COURT: Follows some heavy redactions.

19 (Pause)

20 A. I'm not seeing 313, May 3, 2013.

21 Q. Yes, it is an e-mail from Micah Smith to you.

22 A. And they're in reverse Bates order.

23 Q. No. They go chronologically.

24 A. I've got a bunch.

25 Q. I'll hand you this one?

H1NAAWEI4

Massey - Redirect

1 A. OK.

2 (Pause)

3 Q. At the bottom of that e-mail chain is an e-mail from Agent
4 Thomas McGuire to you?

5 A. I see that.

6 Q. And in that e-mail is that e-mail related to the case we
7 have been discussing?

8 A. It is.

9 Q. And does Agent MaGuire -- does Agent MaGuire explain that
10 he will make sure that the search terms actually in fact pull
11 pertinent documents from the larger, the overall set of
12 materials?

13 MR. SIEGAL: Objection, your Honor. I'm not sure what
14 the word "pertinent" means in this context. Are you talking
15 about responses or pertinent or what? There is no word
16 pertinent in any of these e-mail.

17 MR. FERRARI: Pardon me, your Honor. I don't have it
18 in front of me.

19 THE WITNESS: Sorry. I took your copy.

20 THE COURT: Do you have a copy, Mr. Siegal?

21 MR. SIEGAL: I do, your Honor. I'm just looking at
22 one from my 3500 binder.

23 MR. FERRARI: Sorry. The word is "responsive".

24 THE COURT: Rephrase.

25 Q. Does Agent MaGuire tell you, is he suggesting to you in

H1NAAWEI4

Massey - Recross

1 that e-mail that he runs the search terms you've provided he is
2 going to be checking to see it if they return responsive
3 results?

4 MR. SIEGAL: Objection, your Honor. That
5 mischaracterizes the document.

6 MR. FERRARI: The government is going to offer this
7 document.

8 THE COURT: Any objection?

9 MR. SIEGAL: None, your Honor.

10 THE COURT: All right. Government's 21.

11 (Government's Exhibit 21 received in evidence)

12 MR. FERRARI: No further questions.

13 MR. SIEGAL: I have a couple about this document, your
14 Honor.

15 THE COURT: OK.

16 CROSS-EXAMINATION

17 BY MR. SIEGAL:

18 Q. Mr. Massey, you write in your e-mail on May 3, to Thomas
19 MaGuire that the majority of the terms in the search warrant,
20 the majority of the terms are in the search warrant
21 application. The others are directly related to items listed
22 in the search warrants.

23 A. I don't see that e-mail that you are referring to.

24 MR. SIEGAL: Are we on the same Bates?

25 THE COURT: 315.

H1NAAWEI4

Massey - Recross

1 MR. SIEGAL: I'm looking at 313, your Honor.

2 THE COURT: 313 I don't believe has been submitted.

3 MR. SIEGAL: They're right next to each other in the
4 binder, your Honor.

5 (Pause)

6 THE COURT: Is everything else in the binder? We need
7 a different limiting principle.

8 (Pause)

9 MR. SIEGAL: I'm going to actually turn to a different
10 document, your Honor, which has the same beginning e-mail and
11 different response from Mr. Massey. So, that is also on the
12 same day May -- or the next day May 3, 2013 and I'll offer
13 this.

14 THE COURT: Let me ask for clarity.

15 Mr. Ferrara, when you moved as Government 21, 315 is
16 that just the two age pages or what?

17 MR. FERRARI: Yes, I had -- I know the document
18 Mr. Siegal is referring to and we have no objection.

19 THE COURT: OK. So, we'll mark Wei 313 which is a
20 single page also dated May 3, 2013 as Defense Ten and it is
21 admitted.

22 (Defendant's Exhibit 10 received in evidence)

23 BY MR. SIEGAL:

24 Q. Do you see that set of e-mails, Mr. Massey?

25 A. I don't see 313.

H1NAAWEI4

Massey - Recross

1 Q. If you are looking at 315, if you would turn two pages. I
2 don't know it --

3 A. I got 315 from Mr. Ferrara. I can't find 313 in my binder.

4 MR. SIEGAL: I can walk up and assist, your Honor.

5 THE COURT: OK.

6 (Pause)

7 Q. Handing you what's been marked as Defense Exhibit Ten. Do
8 you see at the bottom that's the same e-mail that we were just
9 looking at, the one from Tom MaGuire to you on May 2nd. And
10 then you respond on May 3rd with a one sentence e-mail. Do you
11 see that?

12 A. I see it, three sentence e-mail.

13 THE COURT: So do I.

14 MR. SIEGAL: I am sorry. It's a three sentence
15 e-mail.

16 Q. You write here are the list of search terms the majority of
17 terms are in the search warrant application. The others are
18 directly related to items listed in the search warrant?

19 A. I see that.

20 Q. Now, when you write the others are directly related to
21 items listed in the search warrant. Is that related as you
22 understand the world to be?

23 THE COURT: What did you mean by "related"?

24 A. I meant, sufficiently closely related that they were -- I
25 mean, first all it's a little bit hard to remember exactly what

H1NAAWEI4

Massey - Recross

1 I meant.

2 THE COURT: If that's the answer. That's the answer.

3 A. That's my best answer. I believe I meant as I testified
4 earlier that some of the terms were sort of further details and
5 on the names that were in the search warrant application; for
6 instance, the Robert Newman e-mail addresses; for instance
7 shareholders of Deer were within the scope of warrant. And we
8 knew about additional shareholders of Deer I believe that's
9 what I meant.

10 Q. When you wrote this e-mail it was already more than a year
11 after you had seized documents, right?

12 A. Yes.

13 Q. So, you had the benefit of 15 month more investigation time
14 when you wrote that list of names, didn't you?

15 A. Yes.

16 Q. Is it fair to say that the relatedness was based in part on
17 the investigation that had been continuing for the year and
18 three months after the search had been completed?

19 A. Well, for instance, with Robert Newman's e-mail address I
20 might have learned that after I knew of his name. So, in that
21 sense a further way to identify Robert Newman. So, it may have
22 come -- I don't remember when I learned that particular fact,
23 what his e-mail address were.

24 Q. Fair to say the expansion of the list here was in part
25 based on what you learned when you found the seized document?

H1NAAWEI4

Massey - Recross

1 A. I don't know that that's the case.

2 Q. But you're not testifying that you attempted on May 3, 2013
3 to put yourself back in the mindset of what you knew as of
4 January 25, 2012 and only used a list of terms that you knew
5 back then, right?

6 A. I think that's right as you've just put it. For instance,
7 a different spelling of the same person's name or an e-mail
8 address of a person in the warrant. To the extent I learned
9 that information in the intervening period, I believe it was
10 acceptable to add that to the list.

11 MR. SIEGAL: Nothing further, your Honor.

12 MR. FERRARI: Nothing further, your Honor.

13 THE COURT: All right. Mr. Massey, you are excused.

14 THE WITNESS: Thank you, your Honor.

15 MR. FERRARI: Your Honor, while Mr. Massey leaves the
16 stand there's just two things to bring up before Komar. First
17 is Agent Komar, we expect to call him second. He has an
18 important work assignment tomorrow morning and I don't think it
19 is to much to ask Mr. Siegal to get through two witnesses
20 today. I probably have an hour with Mr. Komar. If we could
21 maybe go later, try to go a little later to try to get Agent
22 Komar in.

23 The second thing is that Agent Komar is a defendant in
24 the Ganek litigation in which certain assistant U.S. attorneys
25 and FBI agents have been sued by David Ganek who was at that

H1NAAWEI4

Massey - Recross

1 level Global fund he is alleging was an illegal search. It's a
2 civil lawsuit. We disclosed to Mr. Siegal that Agent Komar is
3 a defendant. He had already known that. And we produced
4 certain documents that sort of undergird the allegations
5 against Agent Komar, the reason he is a part of the lawsuit.
6 We think there's -- our view is there's been no wrongdoing.
7 Agent Komar had done nothing wrong. I simply wanted to front
8 it so your Honor understands our objection during the testimony
9 depending on how far afield or into this Mr. Siegal gets. We
10 will be objecting.

11 THE COURT: What do you propose is the proper balance
12 of that question?

13 MR. FERRARI: What do I propose? I think that
14 Mr. Siegal should be -- is entitled to ask the agent if he is
15 in fact the defendant and perhaps if he wants to ask one or two
16 questions about the allegations I think the answers are going
17 to be that Agent Komar believes he has done nothing wrong.
18 Once Mr. Siegal gets those answers I don't believe he is
19 entitled to try and bring in extrinsic evidence in order to
20 further attempt to impeach Agent Komar.

21 THE COURT: I'll hear from you, Mr. Siegal.

22 But let me understand, Mr. Ferrara, you obviously,
23 concede some relevance to articulate what the relevance is as
24 to that basic line of questioning.

25 MR. FERRARI: Some person has alleged that Agent Komar

H1NAAWEI4

Massey - Recross

1 has done something untoward and inappropriate. And I think
2 that Mr. Siegal has a good faith basis to ask whether he in
3 fact engaged in some of that in some of the conduct that's
4 alleged. I think that when he gets the answer "no", the rules
5 prohibit him then from attempting to further impeach or use
6 extrinsic evidence or things of that nature in order to impeach
7 the witness.

8 THE COURT: Mr. Siegal, what are you seeking to do in
9 this category, if anything? I don't know what has been
10 described.

11 MR. SIEGAL: If I may, your Honor, Mr. Komar is the
12 author of some notes and I believe the FBI 302 reports related
13 to debriefing of a man named Mr. Sam Ottonokus who was a
14 witness for the government in a case against other people who
15 used to work for Mr. Ganek. But Mr. Ottonokus took the witness
16 stand at that trial. He testified that he never told the FBI
17 that Mr. Ganek understood he had an inside source at Dell and
18 in fact another agent at the FBI who was present at the same
19 meeting that Mr. Komar took the notes at said the same thing.
20 Said he never understood Sam Ottonokus was saying in that FBI
21 proffer that Mr. Ganek was aware that Ottonokus had a source
22 within Dell.

23 (Continued on next page)
24
25

H1NMWEY5

1 MR. SIEGAL: The 302 that Mr. Komar writes says quite
2 clearly, from what I read, that he did say that. So there is a
3 credibility issue. Now, I don't know. Maybe he is going to
4 take the witness stand and say, that's not what his 302 says.
5 But what we do know is that the affidavit for the search
6 warrant in that case for the offices that Mr. Ganek's business,
7 which I understand was based on Mr. Komar's 302, asserts that
8 Mr. Ganek knew the Adondakis source was an inside source.

9 If Mr. Komar is going to say, that's what Sam
10 Adondakis says to me, that Mr. Ganek did have an inside source,
11 that's at odds with another agent on his staff and the witness
12 himself who said, we never said that. I think there is a
13 credibility issue there and that's an issue that I intend to
14 raise, not belabor, but intend to raise as part of my
15 cross-examination of Mr. Komar whose good faith and credibility
16 are both at issue here.

17 MR. FERRARA: I just wanted to flag for your Honor,
18 the 302. There is a final 302, there is a draft 302, and there
19 are notes. And we have included those in your Honor's binder
20 and I have attempted to put a little sticky note on your
21 Honor's copy of the pertinent page, so if this becomes an
22 issue, your Honor will have the ability to actually look at the
23 document as well.

24 THE COURT: We will see how it goes.

25 In terms of just the time issue, I need to hard stop

H1NMWEY5

1 it 5:15 at the latest. We can't go much longer.

2 when did you get the 3500 material?

3 MR. SIEGAL: Friday evening, your Honor.

4 THE COURT: And didn't labor over the weekend to
5 premark or put this in some way that in any way facilitated
6 this testimony.

7 MR. SIEGAL: Your Honor, I can say that we labored all
8 weekend long, but we didn't spend time pulling apart government
9 3500 material.

10 THE COURT: From now on, when you come into my
11 courtroom, Mr. Siegal, and you are going to certainly -- when
12 we get to the jury, you will have premarked -- and going
13 forward, you'll premark -- it's just not worth everybody's time
14 to sit here and fumble with binders like we have been doing and
15 have a record that's a mess because nobody knows what we are
16 talking about.

17 To make our time move more quickly and to make it
18 worth anything, please going forward just do the basics of
19 premarking your exhibits so that everybody is talking about the
20 same thing so the record clearly reflects that so we can move
21 on without wasting a lot of time.

22 We will stop at 5:15. You have to get through Mr.
23 Komar by then.

24 MR. FERRARA: Your Honor, I am just going to take some
25 things off the witness stand.

H1NMWEY5

Komar - direct

1 THE COURT: Go ahead.

2 You may come forward.

3 MATTHEW KOMAR,

4 called as a witness by the Government,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FERRARA:

8 Q. Good afternoon, Agent. Where do you work?

9 A. The FBI.

10 Q. What's your title?

11 A. Special agent.

12 Q. How long have you been an FBI special agent?

13 A. Just over eight years.

14 Q. What did you do before you joined the FBI?

15 A. I was an accountant.

16 Q. Are you currently assigned to a particular office?

17 A. Yes. The Cleveland division.

18 Q. Turning your attention to late 2011, early 2012, what
19 office were you assigned to?

20 A. New York division of the FBI.

21 Q. To what squad in particular?

22 A. C43, securities fraud.

23 Q. Around when were you first assigned to C43?

24 A. I think it was the summer of 2011, mid 2011.

25 Q. What sorts of crimes does C43 investigate?

H1NMWEY5

Komar - direct

1 A. Securities fraud, money laundering, sometimes corporate
2 fraud.

3 Q. I want to call your attention to January 25, 2012. Were
4 you involved in a search or searches that day?

5 A. Yes, I was.

6 Q. Of what locations?

7 A. 40 Wall Street, 38th floor, the offices of New York Global
8 Group.

9 Q. Any other locations on that day?

10 A. Yes. Subsequently it was apartment 37E, 10 West Street.

11 Q. What case were those searches in connection with?

12 A. The investigation of Benjamin Wey and New York Global
13 Group.

14 Q. What was your role in that investigation at that time?

15 A. I was the case agent.

16 Q. About how many searches had you participated in prior to
17 executing the searches on January 25, 2012?

18 A. I'd say eight to 12.

19 Q. How many searches have you participated in since?

20 A. Probably 35 to 40.

21 Q. Take a look at Government Exhibit 2 in the binder next to
22 you. What is that?

23 A. It's an application for a search warrant for New York
24 Global Group's offices.

25 Q. You're the affiant, correct?

H1NMWEY5

Komar - direct

1 A. That's correct.

2 Q. Who drafted that affidavit?

3 A. It was primarily drafted by AUSA David Massey with my
4 support. He used my reports to draft that affidavit.

5 Q. Did you review it closely before signing it?

6 A. Yes, I did.

7 Q. Did you believe it was accurate at the time you signed and
8 swore to it?

9 A. Yes, I did.

10 Q. Take a look at Government Exhibit 3. What is that?

11 A. It's a search and seizure warrant for 40 Wall Street.

12 Q. Are any statutes listed on the face of that warrant?

13 A. No, there are not.

14 Q. Nevertheless, what was your understanding of what evidence
15 you were permitted to seize during the search?

16 A. Evidence of securities fraud, money laundering, and wire
17 fraud. I'm sorry. Securities fraud and wire fraud.

18 Q. So those are the crimes you understood you were searching?

19 A. Yes.

20 Q. And how, if at all, was your understanding of what you
21 could seize from the perspective of statutes or crimes further
22 limited by the warrant, if at all?

23 A. It was just described in the attachments to the affidavit.

24 Q. Did you doubt the validity of this warrant in any way?

25 A. No, I did not.

H1NMWEY5

Komar - direct

1 Q. How did you prepare for the search itself?

2 A. After obtaining the search warrant on the 24th of January,
3 myself and AUSA David Massey did a briefing with the members of
4 the search team on the afternoon of the 24th.

5 Q. Before we talk about that briefing, take a look at
6 Government Exhibit 1?

7 A. 1?

8 Q. 1.

9 A. Yes.

10 Q. What is that?

11 A. That's an operations order form I was the author of. It's
12 a document that we prepare in preparation for a search warrant.
13 Primarily, it's a document circulated to the search team to
14 make them aware of what we are searching, when, logistics, and
15 things like that.

16 Q. This was prepared in connection with the search of New York
17 Global Group?

18 A. Yes, it was.

19 MR. FERRARA: Your Honor, the government offers
20 Exhibit 1.

21 THE COURT: Government 1 is admitted without
22 objection.

23 MR. SIEGAL: No objection, your Honor.

24 (Government Exhibit 1 received in evidence)

25 Q. Let's take a look at the first page of Government 1. Do

H1NMWEY5

Komar - direct

1 you see this brief synopsis of the case?

2 A. Yes, sir.

3 Q. Who prepared that?

4 A. I did.

5 Q. And then if we turn to the fifth page, after the photo, the
6 page after the photo, do you see in the middle of the page
7 description of operation?

8 A. Yes, I do.

9 Q. Who wrote that?

10 A. I did.

11 Q. What is the purpose of that?

12 A. Just to give a brief synopsis or brief explanation of what
13 type of documents we are going to be looking for in the search
14 warrant.

15 Q. Who saw this ops plan prior to the search?

16 A. Every member of the search team.

17 Q. You mentioned a meeting before the search?

18 A. Yes.

19 Q. I'm sorry. Let me not ask it in a leading way. Who was
20 present at that meeting?

21 A. All members of the search team, if available, which was
22 pretty much everybody, as well as my supervisor and AUSA David
23 Massey.

24 Q. About how long before the actual search on January 25 was
25 that?

H1NMWEY5

Komar - direct

1 A. We did it late afternoon the day before the search warrant
2 was executed.

3 Q. What was discussed?

4 A. We basically, myself and David Massey, explained the
5 investigation. We both agreed that it made sense for him to
6 come over to our office space in the FBI to address every
7 member that was going to be participating in the team due to
8 the complexity of the case. It was a very long and lengthy
9 affidavit, so we wanted to make sure everybody was aware of
10 what we were truly investigating.

11 Q. What do you remember AUSA Massey saying at the meeting?

12 A. I remember him going into great detail going through the
13 examples of what we believed the scheme was essentially that we
14 were investigating and communicating what types of documents
15 that we were going to be looking for, expecting.

16 Q. Did you also participate in the meeting?

17 A. Yes, I did.

18 Q. To what extent?

19 A. Basically, it was led by myself and AUSA Massey. Mr.
20 Massey handled mostly the affidavit part of it and I did as
21 well summarize some parts of the investigation, but my part was
22 more of logistics, making sure everybody had a role and
23 responsibility for that search warrant.

24 Q. In addition to the ops plan, Government Exhibit 1, what
25 case-related materials did the search team have access to prior

H1NMWEY5

Komar - direct

1 to and during the search?

2 A. I made available to each member of the search team the
3 affidavit, the search warrant, and then attachment A and
4 attachment B from the application for the search warrant due to
5 the lengthy amount of types of documents and names that we were
6 looking for.

7 THE COURT: Agent, when you say made available, what
8 does that mean?

9 THE WITNESS: Which document, ma'am?

10 THE COURT: You said: I made available to each member
11 of the search team the affidavit, the search warrant and then
12 attachment A and attachment B from the application.

13 THE WITNESS: So the affidavit, I told the team I said
14 it was a lengthy affidavit. I would e-mail it. You can look
15 at it if you'd like to. But that's why we are here today, to
16 give them a briefing to understand it. But it was made
17 available for them to read it. I did not make sure every
18 single person read it, but it was available to them.

19 THE COURT: And you did e-mail it to them?

20 THE WITNESS: I can't say for sure if it was e-mailed,
21 but it was communicated that if you want to look at this
22 affidavit, it is available for you.

23 THE COURT: I'm just trying to understand if that
24 means for them to get it they would have to approach you in
25 some way --

H1NMWEY5

Komar - direct

1 THE WITNESS: Yes. But I also made it available. I
2 had the affidavit with me the day of the search warrant as
3 well, so it was with me. I did not hand out copies of the
4 100-page affidavit to each member of the team.

5 THE COURT: Are you aware of any members of the team
6 looking at the affidavit?

7 THE WITNESS: Yes, I am.

8 THE COURT: Go ahead.

9 BY MR. FERRARA:

10 Q. Let's turn to the day of the searches. How did the day
11 start?

12 A. We got together again at 26 Federal Plaza, our offices, to
13 prepare logistically how we were going to approach the offices.
14 We had a goal of going into the offices in the morning, but we
15 wanted to make sure that people were in the office, you know,
16 for us to be there when we were searching.

17 Q. Was AUSA Massey also at those morning meetings?

18 A. He was not.

19 Q. Give us a sense of how the search unfolded. What happened
20 as the team was entering NYGG's offices and just after.

21 A. Shortly after 9:00 that morning, we went up to I believe
22 it's the 38th floor, entered the New York Global Group offices,
23 announced ourselves, and then immediately kind of sprawled, I
24 guess you could say, going through the hallways to make sure
25 that everybody was aware what was going on and that nobody was

H1NMWEY5

Komar - direct

1 making any attempt to destroy anything.

2 Q. Did different agents in this search have different roles to
3 sort of carry out?

4 A. Yes. We had different things that we wanted to accomplish.
5 Once we pulled the employees into a small conference area, we
6 had to have an agent with them, you know, just to kind of
7 supervise them. We had -- one or two agents as well were
8 interviewing each of those employees at a time to get -- obtain
9 information from them.

10 Q. So we had some agents with the employees. What other
11 things were agents doing?

12 A. They were also searching the rooms. We also had our CART
13 or computer specialists that were working on the server room.

14 Q. What, if anything, does your team do to sort of chronicle
15 what they are seeing in the offices itself?

16 A. Once we clear essentially any building or office for a
17 search warrant for safety purposes, the first next step is for
18 a photographer to take photos. While we are going through the
19 offices, and taking photographs, we are also labeling those
20 rooms so that we can say, this item came from room A or office
21 B and such. That's kind of the first step before we actually
22 start searching. It's just kind of preparing for it.

23 Q. Did the search team, the agents of the search team, have
24 copies of the warrant and attachments during the search?

25 A. Yes, absolutely.

H1NMWEY5

Komar - direct

1 Q. What was your role during the search?

2 A. I was designated as the team leader just because I was the
3 case agent. I did search a portion of the office, the
4 reception area, just because that was an area where I felt was
5 a central area to make myself available to the team. I made it
6 clear to them that if they had any questions during the warrant
7 to come ask them to me.

8 Q. Did agents in fact take you up on that and ask you
9 questions?

10 A. Yes, on numerous occasions.

11 Q. Do you remember what sorts of questions the agents were
12 asking you?

13 A. One that comes to mind, someone brought like a portfolio or
14 a glossy document with one of the company's names on it. There
15 were multiple copies of it. So they asked me if we are taking
16 this. I said, just take one, that that was the reason we are
17 taking it. There was also a letterhead that just had New York
18 Global Group on it and it wasn't relevant to anything of the
19 search warrant. I said, we don't need to take that.

20 Q. Let's take a look at some things that have been marked as
21 exhibits. Let's look at 4, 5, and 8. Take a moment and look
22 at 4, 5 and 8. Flip through those. I am going to do it in
23 order. I am going to ask you what is 4, what is 5, what is 8.

24 A. 4 is a sketch that was completed of the office area of New
25 York Global Group. It's also done -- started when we go

H1NMWEY5

Komar - direct

1 through and do photographs just so we have a layout so it can
2 be produced in something like this.

3 Q. What is 5?

4 A. 5 is a sign-in log sheet, basically just noting who is
5 getting access to the area, at what time and what time they are
6 departing.

7 Q. Finally, what is 8?

8 A. 8 is a disk. It contains photographs from the search
9 warrant.

10 Q. How do you know 8 contains those photographs?

11 A. I reviewed this CD yesterday.

12 Q. Did you initial it?

13 A. Yes, I did.

14 MR. FERRARA: Your Honor, the government offers 4, 5,
15 and 8.

16 THE COURT: Without objection.

17 MR. SIEGAL: No objection, your Honor.

18 THE COURT: Government Exhibits 4, 5, and 8 are
19 admitted.

20 (Government Exhibits 4, 5, and 8 received in evidence)

21 Q. I don't actually want to show you any photographs from 8.
22 So the record is clear, Agent, give us a sense, does 8 contain
23 what we call both entry and exit photos?

24 A. Yes, it does.

25 Q. What's the difference?

H1NMWEY5

Komar - direct

1 A. Entry photos are when we enter and exit is to show the
2 condition of the office at the end. They are both included on
3 this disk. I think if you look at the time stamps on the
4 files, you'll be able to see around 9 a.m. is when the first
5 set of photographs are, and then at the end it's around 2,
6 2:30, I think.

7 THE COURT: Mr. Ferrara, I want to just go back a
8 little bit. I wanted to ask a follow-up. You gave a specific
9 example of NYGG letterhead that was shown to you and you said
10 it's not -- are you saying it was like blank letterhead or how
11 did you make a determination --

12 THE WITNESS: I can't recall specifically what was on
13 it. I just remember that sometimes people will bring something
14 to you because a name is on a document that matches the
15 attachment B and I looked at it and said no. We don't need to
16 take this. It's not something that's in terms of the search
17 warrant. I can't say specifically what that was, though. It
18 was five years ago. I'm sorry.

19 THE COURT: If you can't remember, you can't remember.
20 In thinking, you have that example in mind.

21 THE WITNESS: I do remember that, yes.

22 THE COURT: You described it as letterhead. Do you
23 mean it was something on letterhead and then you read the
24 substance to make a determination?

25 THE WITNESS: Yes. I agree. There was something

H1NMWEY5

Komar - direct

1 there. It wasn't a blank letterhead and I read the substance
2 and evaluated and determined that we did not need to take that
3 per the search warrant.

4 THE COURT: Do you recall why?

5 THE WITNESS: I do not.

6 THE COURT: Go ahead.

7 Q. Agent Komar, if you take a look at Government Exhibit 4,
8 the diagram.

9 A. Yes.

10 Q. You said I think you were in the reception area as it's
11 labeled there on the diagram. Is that right?

12 A. Right. That's correct.

13 Q. Looking at government 4, were there any areas of the
14 offices that were off limits to the search team?

15 A. Yes. We determined that we were not going to be searching
16 James Baxter's offices, which was labeled as H. He was the
17 general counsel for New York Global Group. And just in an
18 abundance of caution and coming across privileged information,
19 we marked it as not searching, and you can see that on the
20 photographs actually, I believe.

21 Q. Where were the NYGG employees during the search?

22 A. They were located in a small conference room. I think it's
23 like F or G. I can't say specifically which one.

24 Q. Was Mr. Wey present?

25 A. I'm sorry. I apologize. Not F or G. It's actually over

H1NMWEY5

Komar - direct

1 by K, where the employees -- that's where the employees were
2 kept or they were put during the search warrant.

3 Q. Was Mr. Wey present?

4 A. Yes, he was.

5 Q. Where was he?

6 A. He was initially, when we entered the offices -- his
7 office, which was office G, and then he was put into with the
8 other employees the small conference area.

9 Q. I think you said you searched the area of the reception?

10 A. That's correct.

11 Q. How did you conduct your search, your personal search?

12 A. I opened the drawers, kind of going through documents
13 looking through folders. I came across some Fed Ex receipts
14 and shipping information that was covered by the search
15 warrants. I also went through the Rolodex. There was like a
16 Rolodex of business cards that was available.

17 THE COURT: Slow down a little bit, Agent.

18 THE WITNESS: Sorry.

19 THE COURT: Thank you.

20 A. Going through the business cards and just the drawers in
21 general, just flipping through the documents and determining
22 what was relevant to the search warrant.

23 Q. Is it in your interest as the case agent to recover
24 material outside the scope of the warrant?

25 A. No, it's not. It makes our job lengthy. It is burdensome

H1NMWEY5

Komar - direct

1 to go through documents that aren't relevant to an
2 investigation. It's just more work for us to go through it.

3 Q. As to NYGG, were agents able to look through every page of
4 every document during the search?

5 A. I can't say for sure about what other agents were able to
6 do, but my understanding is they went through a very detailed
7 review. Towards the end of the search warrant I do kind of a
8 talkback review where I was going into the areas where people
9 had searched and asking them, did you look in that file
10 cabinet, did you do this? And they were also shown the
11 documents that they wanted to take. So I was able to kind of
12 review that with them quickly just to make sure we were
13 thorough.

14 Q. Why was it possible in this instance, to your belief, to go
15 through every page as to this search at NYGG?

16 A. We had the time. The computers were taking a little bit of
17 time. We were going to be there for a little while. So I
18 wanted to make sure that we were organized and taking what we
19 needed and only what was relevant.

20 Q. Were there a substantial number of paper records in the
21 offices?

22 A. There really wasn't. I think around 4500 pages, which is
23 the size of one case of printer paper.

24 Q. To be clear, is that what you seized or what you found
25 total?

H1NMWEY5

Komar - direct

1 A. That is what we seized.

2 Q. Were all the electronics --

3 THE COURT: How did that compare with what appeared to
4 be their total or what was examined for relevance?

5 THE WITNESS: There wasn't a lot of documents in the
6 office. We kind of knew that going into the offices. That was
7 explained to us during some interviews. There was definitely
8 documents that were left, but, overall, it was very surprising
9 because in most businesses I've been in, you see a lot more
10 paper, and this office didn't have much. So it's hard to give
11 it a percentage or anything like that. We didn't take every
12 single piece of paper, but there really wasn't much paper to
13 start with either.

14 Q. Were all the electronics seized?

15 A. Everything that was in the search warrant, yes.

16 Q. Let me ask a better question. Were all the electronics
17 sort of -- were the originals taken? Were some imaged on site?
18 In other words, were some copied, were some taken? How did
19 that work?

20 A. The intention of trying to image on site all of the
21 computers and the server, as well as cell phones and any other
22 thumb drives, it became difficult for our forensic examiners to
23 get into the server at first and then was just determined from
24 a time perspective, it was just going to be better for us to
25 image offsite. With that conclusion we took the hard drives

H1NMWEY5

Komar - direct

1 out of the computers, the desktop computers in the offices, and
2 took those to be imaged offsite.

3 Q. Was anything imaged on site?

4 A. I believe there was. I know cell phones were. But I can't
5 say for sure, you know, one hard drive or not. I think there
6 was an attempt to image on site, but it was just decided that
7 we are done and we can't be here forever.

8 Q. I think you alluded to this. But just to be clear, were
9 there any members of the CART team as part of the search team?

10 A. Yes. Approximately four to five examiners that were -- we
11 had decided that bring them with us. Sometimes we don't bring
12 that many, but we kind of knew we were going to have a lot of
13 digital evidence to go through.

14 Q. At some point during the search of NYGG, did you learn that
15 evidence might be located at another location?

16 A. Yes.

17 Q. How did you learn that?

18 A. Agent Garwood, one of the agents who was interviewing
19 employees, brought it to my attention that an employee said
20 that Ms. Wey was essentially an office manager, that he
21 described her as an office manager where she maintained records
22 for the business at her house, that she didn't have an office
23 at 40 Wall Street. She took that responsibility and those
24 duties while she lived in her apartment in her residence.

25 Q. What did you do after receiving that information?

H1NMWEY5

Komar - direct

1 A. I reached out to AUSA David Massey to let him know of the
2 information we learned, and we wanted to apply for a search
3 warrant for the residence. And at that point in time Agent
4 Garwood left the offices to go back with AUSA David Massey to
5 draft that affidavit.

6 Q. What other steps, if any, did you take to prepare for the
7 search of the residence?

8 A. We had a couple of agents that were assigned to issue --
9 I'm sorry -- serve grand jury subpoenas that morning. A couple
10 of them were to Ms. Wey at the residence. Once they served
11 Ms. Wey with those grand jury subpoenas, I let them know that
12 they needed to stay at the location to make sure it was secure
13 because we were expecting a search warrant.

14 Q. Take a look at Government Exhibits 9 and 10. What are
15 those?

16 A. Exhibit 9 is application for the search warrant for
17 apartment 37E, 10 West Street, New York, New York, and Exhibit
18 10 is the search and seizure warrant for the same location.

19 Q. Take a look at 10.

20 A. Um-hum.

21 Q. Are any statutes listed on the face of the warrant?

22 A. There are no statutes listed.

23 Q. Nevertheless, what was your understanding of the evidence
24 you were permitted to seize during the search of the residence?

25 A. Evidence related to securities fraud, mail fraud, and wire

H1NMWEY5

Komar - direct

1 fraud.

2 Q. Was that limited in any other way or was that your
3 understanding?

4 A. That was my understanding.

5 Q. And how if at all, in your mind does the warrant influence
6 what you are allowed to seize in terms of those crimes?

7 A. It describes what we are allowed to take in attachment A
8 and attachment B.

9 Q. Did you doubt the validity of this warrant in any way?

10 A. No, I did not.

11 Q. Were you present for the search of the residence?

12 A. Yes, I was.

13 Q. Let's take a look at Government Exhibits 11, 12, and 15.

14 A. OK.

15 Q. Those have been marked as Government Exhibit as 11, 12, and
16 15. What is 11?

17 A. 11 is a sketch of the residence.

18 Q. What is 12?

19 A. 12 is the sign-in sheet for the location of the search
20 warrant.

21 Q. How about 15?

22 A. 15 is a CD that contains photographs from the search
23 warrant.

24 Q. How do you know it contains those photographs?

25 A. I reviewed it yesterday and initialed it.

H1NMWEY5

Komar - direct

1 MR. FERRARA: Your Honor, the government offers 11,
2 12, and 15.

3 THE COURT: Without objection.

4 MR. SIEGAL: No objection.

5 THE COURT: Government 11, 12, and 15 are admitted.

6 (Government Exhibits 11, 12, and 15 received in
7 evidence)

8 Q. Let's start with 12. Around what times did agents arrive
9 at and leave the residence on January 25?

10 A. 4:30 is about the time that we had word that we had a
11 warrant for the residence and then it wasn't until about 9:00,
12 just before, that we left.

13 Q. 9:00 at night?

14 A. Yes.

15 Q. How did that search unfold?

16 A. The two agents that stayed on the location, it was
17 determined they communicated to us that there was actually two
18 levels, so they were each stationed outside the doors to make
19 sure that nothing was going on in terms of destruction of
20 evidence while we were waiting for that warrant.

21 Once we got word that warrant had been signed, we
22 entered the apartment. Ms. Wey was located in the apartment
23 and then we did the same thing, went through, took photographs,
24 and labeled the rooms as well as start working on the sketch.

25 Q. What was your role during the search of the residence?

H1NMWEY5

Komar - direct

1 A. I was essentially the team leader.

2 Q. Were you asked any questions during the search?

3 A. Yes, I was.

4 Q. What sorts of questions?

5 A. Just in terms of documents that -- are these relevant to
6 the search warrant again. We came across the office area which
7 had a large amount of documents, and that was brought to my
8 attention. So I kind of knew that that was going to be the
9 crux of the search and spent some time with agents going
10 through documents.

11 Q. Looking at Government Exhibit 11, what area are you
12 referring to?

13 A. That would be area D.

14 Q. Did you participate in the search itself, in addition to
15 taking questions?

16 A. Yes, I did.

17 Q. What areas did you search?

18 A. Once it was determined that we located the office with a
19 large amount of documents, we -- I made a decision that we were
20 going to quickly go through the other areas of the apartment
21 just to make sure there wasn't any evidence that we were
22 looking for. So that included, I went through a guest room,
23 what appeared to be a guest room, helped with I think one of
24 the children's rooms, and then focused our attention on the
25 office area.

H1NMWEY5

Komar - direct

1 Q. Were there records, substantial number of records, found in
2 places other than this office area?

3 A. Not substantial, no.

4 Q. Let's take a look at some of the photos on Exhibit 15. We
5 have marked these separately.

6 Take a look at -- let's start with 15A. Do you have
7 it? Is it your in your binder?

8 A. Yes, your Honor.

9 MR. FERRARA: Your Honor, we should have put those in
10 your binder as well.

11 THE COURT: I have it. Thank you.

12 Q. If we look at 15A and then I want to take a look at 15G.

13 A. OK.

14 Q. What are we seeing here? First off, what area is this that
15 we are looking at in 15A and 15G?

16 A. That was a closet area that was part of area D, the office.

17 Q. What is the difference between 15A and 15G? In other
18 words, we see that there is fewer boxes and things in 15G. Why
19 is that? What is the difference?

20 A. 15A is when they entered and did our first photos, and then
21 our exit photos is 15G, once we left.

22 Q. To make sure I'm understanding this, if we see something in
23 the exit photos on Exhibit 15, does that mean the FBI left it
24 there or could it have been taken later?

25 A. No. That would mean that those items were left in place

H1NMWEY5

Komar - direct

1 where that picture shows.

2 Q. Those items in 15G that we are seeing, those were left
3 there?

4 A. Correct.

5 Q. And, again, to also be clear, if we don't see something in
6 15A, can we look at this exhibit and understand that the FBI
7 has seized that? In other words, has it been simply moved to
8 another part of the apartment or if we don't see it in 15A,
9 then we can understand it's been seized?

10 A. You can understand that it's been seized.

11 Q. Let's now look at 15B and C.

12 A. Um-hum.

13 Q. What area is that?

14 A. This is area D of the office area that is adjacent to that
15 closet that we just saw.

16 Q. Let's compare those to 15E and F.

17 A. B and C are the entry photos and E and F are the exit
18 photos for the search warrant.

19 Q. So the items in E and F were left behind?

20 A. Correct.

21 MR. SIEGAL: Your Honor, can I have a minute to look
22 at these.

23 THE COURT: When did you get exhibits?

24 MR. SIEGAL: We were given these this morning, your
25 Honor.

H1NMWEY5

Komar - direct

1 MR. FERRARA: Your Honor, these photos have been
2 produced a long time ago. That is correct, that these versions
3 were handed out this morning.

4 THE COURT: How much longer with the witness?

5 MR. FERRARA: Your Honor, I have about maybe three
6 full pages of an outline in 14-size font. 10 minutes.

7 THE COURT: We will break when you are done.

8 Proceed.

9 MR. FERRARA: Thank you, your Honor.

10 Q. Let's take a look at 15D.

11 A. Yes.

12 Q. What is that?

13 A. This is spread out on the floor with the contents of a
14 kitchen trash bag that was located in a black suitcase towards
15 the rear of a closet in the apartment.

16 Q. Did you find the documents as we see them in this photo?

17 A. No, they were not. So the documents were in the white
18 trash bag contained in the zipped-up suitcase. In order to
19 have to search the contents of the trash bag, we had to empty
20 the white trash bag and then we took a photo of it.

21 Q. The contents included documents and also what looked like
22 trash?

23 A. Yeah. They were elements of trash or food.

24 Q. Take a look at 15H.

25 THE COURT: Where was the trash bag found?

H1NMWEY5

Komar - direct

1 THE WITNESS: The trash bag was in a zipped-up black
2 suitcase that was in the rear of a closet.

3 THE COURT: Go ahead.

4 A. What was your question?

5 Q. Let's take a look at 15H.

6 A. Um-hum.

7 Q. What do we see in 15H?

8 A. Group of documents that were ripped up and found in that
9 trash can right there.

10 Q. Again, to be clear, were the documents on the floor like
11 that when you found them?

12 A. They were not, no.

13 Q. They were in the waste paper basket that we are seeing just
14 above them in the photograph?

15 A. Correct. We just pulled them out to -- we pulled them out
16 to take a picture to show where they were from and the
17 condition they were found.

18 Q. As to the torn-up documents in 15D and 15H, what did you do
19 with those?

20 A. Those documents were taken. Some of the documents were in
21 English and we were able to determine that they were relevant
22 to the search warrant. The other documents that were not,
23 there were some there that were in a foreign language that I
24 could tell. We even had to take them back to our office to
25 just piece the puzzle together. I couldn't make the evaluation

H1NMWEY5

Komar - direct

1 at that point in time what the contents of those pages were.

2 Q. What did you do when you brought the ripped documents back
3 to your office?

4 A. I basically pulled those items out and put some gloves on
5 and started piecing them together and taping them up to where I
6 could determine what type of documents we were looking at.

7 Q. Take a look at what's been marked as Government Exhibit 20.

8 A. 20?

9 Q. Yes.

10 A. Um-hum.

11 MR. FERRARA: I think all those photos are in, your
12 Honor, because they are all on that disk. To the extent they
13 are not, I move them individually in.

14 THE COURT: They are in and then they are in again.

15 MR. FERRARA: Fine, your Honor. Thank you.

16 Q. If we look at what has been marked as Government Exhibit
17 20.

18 A. Yes.

19 Q. What is that?

20 A. That is the document that we found, that we just saw in
21 15H. It's a document that was -- with multiple pages
22 describing Mr. Wey and his different attorneys, bank accounts,
23 insurance, trusts, and things.

24 Q. We saw this torn up. How was it put back together?

25 A. As you can see from the photo on page -- we started to kind

H1NMWEY5

Komar - direct

1 of have an idea of how it should have been, piece it back
2 together. When I was back in my office, I was able to take
3 each page and essentially tape it so it could be read and
4 reviewed.

5 MR. FERRARA: The government offers 20, your Honor.

6 THE COURT: Without objection?

7 MR. SIEGAL: No objection.

8 THE COURT: Government 20 is admitted.

9 (Government Exhibit 20 received in evidence)

10 Q. Let's come out of the exhibits for a second and talk a
11 little more about the search of the residence.

12 A. OK.

13 Q. Other than agents and FBI personnel and you mentioned
14 Ms. Wey, was anyone else present at any point during the search
15 of the residence?

16 A. At one point Ms. Wey's attorney, I believe his name was
17 John Bostany, came to the apartment with one of his associates.

18 Q. And what, if anything, did they do while they were on the
19 premises?

20 A. They spoke with my supervisor to understand what was going
21 on. Ms. Wey had communicated to her attorney that she -- who
22 was in fact herself an attorney and there might be some
23 privileged documents that are in the apartment. So there was a
24 discussion made between Mr. Bostany, my supervisor, and Mr.
25 Massey to decide what to do with those potentially privileged

H1NMWEY5

Komar - direct

1 documents.

2 Q. How was that resolved?

3 A. It was decided that the associate from Mr. Bostany's firm
4 would take those documents and conduct a privileged review.

5 Q. Based on what you were doing and based on what you saw the
6 agents around you doing, do you believe that agents were
7 looking through every single piece of paper in every folder in
8 every file before deciding whether to seize boxes or files?

9 A. If you look back at the photos of the closet, it was a
10 large amount of documents. If we would have gone through every
11 single piece of paper in those boxes, we would have been there
12 for three to four days, probably. We were at someone's
13 residence where her family was expected back, and there is a
14 little bit of a sense of urgency that we didn't want to disrupt
15 someone's life. We decided to flip through a box, see if there
16 are relevant documents. If you make that decision, you are
17 taking that box pursuant to the search warrant.

18 Q. To be clear, not going through every single page of every
19 single document?

20 A. Correct.

21 Q. Give us a sense, you're flipping through different
22 documents. How else are you orienting yourself to what is
23 pertinent versus -- what is embraced by the warrant versus what
24 is not embraced by the warrant?

25 A. We are pulling out manila folders, looking through them,

H1NMWEY5

Komar - direct

1 seeing if they are -- in some cases there are bank statements.
2 If you saw a folder with bank statements labeled and other
3 folders marking different dates, it was assumed that those
4 contained all those -- flipping through them quickly just to
5 make sure that they understood what we were taking.

6 Q. I think we saw some of this in the photos. Did you leave
7 any documents behind or did you take everything?

8 A. No, we did not take everything. The documents that were
9 left behind were in the exit photo -- exit photos.

10 Q. What did the team do with the paper documents that had been
11 seized?

12 A. We collected it and took it back to our offices.

13 Q. How about the electronic evidence?

14 A. The electronic evidence was taken by one of our CART
15 computer examiners and taken to Moonachie offsite to process,
16 to image those -- that digital evidence.

17 Q. Was electronic evidence also seized from the residence?

18 A. Yes, it was.

19 MR. FERRARA: This is my last line of questioning,
20 your Honor. Maybe five or so minutes on how the FBI processed
21 the electronic evidence. OK.

22 Q. What's the first step in processing?

23 A. It's basically imaging it, creating a duplicate copy that's
24 pure and evidentiary so that the original is not needed. Just
25 an evidence rule or procedure.

H1NMWEY5

Komar - direct

1 Q. Is that something you do or is that a CART function?

2 A. That's a CART function. That's a forensic examiner who is
3 trained to specially do that.

4 Q. About how long did it take CART to image the electronic
5 evidence?

6 A. So the search warrant was the 25th of January. They imaged
7 it through mid-February, I believe. At that point in time I
8 was able to give back the originals from the office as well as
9 the residence with the exception of thumb drives that were
10 found. It was decided by myself and AUSA Massey to keep the
11 thumb drives just due to the background of information we had
12 about what those thumb drives may contain. We wanted to keep
13 those and we didn't feel that that was infringing on the
14 business or the residence.

15 Q. After the electronic evidence is imaged, what's the next
16 step?

17 A. Next step is for it to be processed. I guess the best way
18 to describe it, it's basically loaded up into a review tool so
19 that searches can be done and people like myself and other
20 agents can review them.

21 Q. Help us understand how it works. Does chart simply process
22 it all sort of at once or are they able to process different
23 things in order, on a rolling sort of basis?

24 A. Understood. There was a large amount of digital evidence
25 taken from both these locations. I think it was around the

H1NMWEY5

Komar - direct

1 size of 18 terabytes. So the CART examiner who was assigned to
2 load these up into the searching tool just asked me, are there
3 priorities. Can you tell me what you -- what needs to be
4 loaded first. I decided that room G in the office, which was
5 Mr. Wey's office, the server room in the office, as well as all
6 the thumb drives, would be separated into what we call traunch
7 A, which would be the priority of the CART examiner to make
8 available to be reviewed, and then he would eventually get to I
9 think traunch B and C.

10 Q. Once CART had processed the evidence, were you able to look
11 at it?

12 A. No, we weren't able to do that because of potential
13 privileged information contained on the digital evidence. We
14 decided that we would have a group of what we call a taint team
15 or privilege review team to go through the documents to pull
16 out any potentially privileged material so that I wasn't privy
17 to it or anybody else I was working with on the case. So that
18 took a little bit of time in terms of doing that.

19 One of the other things that took a little bit of time
20 was accumulating a list of attorneys. Some people only have
21 like one or two attorneys that they use. It makes a privilege
22 review easy to pull documents. We were told by counsel for the
23 defendant that there was a number of attorneys. And between I
24 believe Mr. Massey and defense counsel this list was
25 compromised.

H1NMWEY5

Komar - direct

1 Q. Just help us understand. You're talking about a privilege
2 review team doing something. What does that actually look like
3 when it happens? Are we talking about one person? Are we
4 talking about one agent, multiple agents? How many computers
5 are they able to work off of? Give us a sense of how it
6 actually happened.

7 A. We are able to have three agents on a different squad be
8 assigned to assist us with this privilege review. They have to
9 sit at their terminals essentially and start reviewing. The
10 easiest way to start reviewing is by doing search terms. The
11 reason we asked for a list of attorneys that was lengthy was to
12 run searches on law firms to make sure we were pulling the
13 right documents.

14 However, it came to my attention that some of the
15 searches weren't working effectively and some of the agents let
16 me know about that, but they ended up doing more of a detailed
17 review than just searching and then checking and pulling. They
18 were actually looking at the documents.

19 Q. When you say not working, do you mean technologically, that
20 is to say, the computer wasn't working, or you mean they were
21 returning a number of results or not returning results and were
22 ineffective searches?

23 A. They were ineffective searches is what we concluded.

24 Q. Do you recall when the filter team began its review?

25 A. I believe it was around June 20, I think is what my

H1NMWEY5

Komar - direct

1 understanding was.

2 Q. Of what year?

3 A. Of 2012.

4 Q. Do you recall around when the filter team completed its
5 review?

6 A. The agents that were assigned rotated off to other squads
7 around July, end of July of '12. That was brought to my
8 attention. Myself and my supervisor spoke with those agents
9 and decided or communicated or discussed with them if they were
10 going to have time to continue their review. They said that
11 they would be able to carve out a few hours or days in a week
12 to dedicate towards completing that review, which, to the best
13 of my knowledge, I think was completed in December of '12.

14 Q. Why was it a better result to have the same agents stick
15 with it even if they had other responsibilities rather than
16 getting new filter agents?

17 A. These agents had already spent a few months doing this and
18 becoming familiar with the process, the tool. It's a tool that
19 not every agent is trained on initially, so it takes some time
20 to get familiar with it. From an efficiency perspective, it
21 made sense to try and keep that core team together.

22 Q. I asked you I think an imprecise question because I asked
23 you when to the best of your recollection the filter process
24 ended. Was that happening on a rolling basis or were you
25 waiting for them to get through everything before you looked at

H1NMWEY5

Komar - direct

1 anything?

2 A. Going back to the weighted discussion of the evidence --
3 when they asked me to weigh or prioritize parts of the digital
4 evidence, I was able to get into traunch A sooner because that
5 was what the privilege review focused on. Just like the CART
6 examiner focused on preparing that. They were focused on
7 reviewing traunch A first. So I was told that traunch A was
8 completed for the privilege review some time during the fall of
9 2012, which then the CART team is able to pull all those
10 documents out that are flagged and I'm able to go in and
11 review.

12 Q. At that point what does your review entail?

13 A. It's similar to what a privileged team member is doing.
14 They are doing searches. However, just learning the tool and
15 how it works, I found it more effective to kind of go through
16 the files in more detail. One of the things that I started
17 working on was the thumb drives, so I was able to look at the
18 specific contents of each thumb drive. Similar to Windows
19 Explorer where you see different folders and subfolders, I am
20 able to look into the contents of any of those subfolders to
21 review them substantively for the investigation.

22 Q. What are you looking for as you are going through? That is
23 to say, what, if anything, are you doing with the documents or
24 flagging them, etc.?

25 A. Essentially, we are classifying them as pertinent or

H1NMWEY5

Komar - direct

1 nonpertinent. I think there were also documents that we
2 flagged as needs translation.

3 Q. What does it mean to be pertinent?

4 A. Pertinence. We believe it's evidence of the crime that we
5 are investigating. It's giving us information about that
6 investigation or that crime.

7 Q. How far did you get in your review?

8 A. I didn't spend that much time on the thumb drives. I
9 didn't get through all of traunch A.

10 Q. How did you conduct your search? Did you have a list of
11 search terms? What were you using to help you decide what was
12 pertinent or what was not pertinent?

13 A. Not search materials, but just my knowledge of the case.
14 So I was able to review documents in detail and determine
15 whether or not it was needed for this investigation.

16 Q. How, if at all, did the warrant affect what you decided was
17 pertinent or not permanent?

18 A. I could always review the warrant to look back at those
19 lists of attachment B to determine if things were covered by
20 the scope of the warrant.

21 Q. I apologize. Did I ask how far you got in your review?

22 A. You did, yes.

23 Q. Did you complete the review of documents for pertinence?

24 A. No, I did not.

25 Q. Why not?

H1NMWEY5

Komar - direct

1 A. In February or March of 2013, I was reassigned to
2 Washington, D.C. to work on a number of international bank
3 cases with headquarters.

4 Q. Who took over as case agent?

5 A. Thomas McGuire.

6 Q. What, if anything, did you do to get Agent McGuire up to
7 speed?

8 A. I sat down with Mr. McGuire, went through my notes, my
9 working documents, to discuss what I had done to that point in
10 time so we could have a smooth transition. Also explaining
11 where we were with the privilege review and the document review
12 and digital review.

13 MR. FERRARA: One moment, your Honor. My colleague
14 had thought of one thing.

15 Q. You had mentioned that you sent agents over to the
16 residence before you had the search warrant, correct?

17 A. Yes.

18 Q. Did those agents enter the residence?

19 A. No. I communicated to those agents that they were to knock
20 on the door. They had to serve some subpoenas to Ms. Wey
21 anyway. When they spoke with Ms. Wey they let her know that we
22 were obtaining a search warrant for the residence and that she
23 was not to destroy anything and that we would be waiting
24 outside the doors to make sure there was no evidence of any
25 destruction of evidence until that search warrant was obtained.

H1NMWEY5

Komar - direct

1 MR. FERRARA: No further questions, your Honor.

2 THE COURT: Before you sit down, one follow-up on the
3 description of the process for searching the paper documents in
4 the residence. You said the question was basically, were you
5 able to look through every single document and you said no.
6 There was too much. For example, with boxes you would look and
7 see, some subset of these seem responsive. If so, then you
8 might take the entire box. Is that a fair --

9 THE WITNESS: That it is a fair description of the
10 subset, sampling, kind of going through and making sure you are
11 not taking anything that's outside of the scope of the warrant.
12 So you're getting a little bit of comfort, but I can't say for
13 sure that everyone is going through every single page.

14 THE COURT: You do that box by box.

15 THE WITNESS: Box by box. There maybe would be a
16 number of manila folders with labels or Redwelds organizing it
17 that you can find of flip through and get an idea in substance
18 of what you're looking at.

19 THE COURT: With respect to the picture at government
20 15D that we discussed as well as the trash can at 15H, were
21 those gone through item by item or comparable process?

22 THE WITNESS: We did not go through those items until
23 we were able to take those items with us to take the time to
24 piece them together. We just took it all in substance where it
25 was found, and I was able to document my subsequent review of

H1NMWEY5

Komar - direct

1 those documents and piecing those together.

2 THE COURT: For example, the full content of the trash
3 bag at 15D was taken?

4 THE WITNESS: Yes.

5 THE COURT: And the full content of the trash can at
6 15H was taken?

7 THE WITNESS: I can honestly say, your Honor --

8 THE COURT: I can't hear you.

9 THE WITNESS: The one in 15H I can't say for sure if
10 that entire contents of that small trash can were taken. I
11 think it's a smaller amount of documents, so someone was able
12 to kind of go through them, where in the preceding example we
13 had fresh food and it was kind of a mess, to be honest with
14 you, your Honor, where it didn't make sense for us to go
15 through it there.

16 THE COURT: What's on the floor there was put back in
17 the bag and --

18 THE WITNESS: Yes. For that preceding example. For
19 the small trash can on 15H, I know that we took that document
20 that the picture is taken off. I can't say for sure if any
21 other contents of that trash can were taken.

22 THE COURT: Thank you.

23 MR. FERRARA: Let me ask one more question based on
24 that, your Honor.

25 THE COURT: You may.

H1NMWEY5

Komar - direct

1 Q. Agent Komar, what was your impression when you saw the
2 papers in the trash bag in the suitcase in the closet?

3 A. Our first impression is someone was trying to hide
4 something that was recent. It doesn't make any sense for a
5 trash bag, first off, to be inside the suitcase in the back of
6 a closet --

7 THE COURT: Is there a photo of the closet and the
8 suitcase?

9 THE WITNESS: I can't say for sure, your Honor.

10 THE COURT: Mr. Ferrara.

11 MR. FERRARA: We will mark this as Government Exhibit
12 22, your Honor.

13 Q. Do you recognize that?

14 A. Yes. That was the suitcase that contained the white trash
15 bag.

16 MR. FERRARA: We will offer 22, your Honor.

17 THE COURT: The white trash bag, the contents of which
18 and the bag itself are in 15D, were found in what's been now
19 marked as Government 22.

20 THE WITNESS: Correct, your Honor.

21 THE COURT: That suitcase was in the back of a closet.

22 THE WITNESS: Yes. So we were able to determine it
23 was fresh trash. So that was more of a heightened scrutiny of
24 why someone would put fresh trash in a suitcase in the back of
25 a closet.

H1NMWEY5

Komar - direct

1 MR. FERRARA: The government offers 22, your Honor.

2 THE COURT: Without objection?

3 MR. SIEGAL: I'm sorry. Which is 22, the suitcase?

4 No objection to the suitcase, your Honor.

5 THE COURT: 22 is admitted.

6 (Government Exhibit 22 received in evidence)

7 THE COURT: Mr. Ferrara, can the government make a
8 representation if there is a photo included or on the disks of
9 the closet where the suitcase was found?

10 MR. FERRARA: We will look for that overnight, your
11 Honor. I don't remember seeing it with the suitcase in there,
12 but we will go back and look and see if we can find one of the
13 closet itself.

14 THE COURT: Agent, given the heightened suspicion that
15 that suggests, presumably, that's the kind of thing that would
16 have been photographed in place in the normal course?

17 THE WITNESS: In the normal course, yes, or pulled out
18 to do that. I believe the agent who found it, when I had come
19 across it, they had already pulled it out of the closet, so I
20 wasn't sure.

21 THE COURT: You would expect the suitcase at least to
22 have been photographed?

23 THE WITNESS: Yes. That's one of the reasons we also
24 took the suitcase, your Honor, because we wanted to show -- I
25 talked to AUSA Massey and he said, take it all because

H1NMWEY5

Komar - direct

1 essentially --

2 THE COURT: You would typically -- tell me if this is
3 right -- before you remove objects as suggested here, but in
4 the normal practice, you take photographs of where they are
5 found.

6 THE WITNESS: Yes. Normal practice.

7 THE COURT: We will take a break. 10 minutes.

8 (Recess)

9 (Continued on next page)

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H1NAAWEI6

Komar - Cross

1 THE COURT: Agent Komar, I remind you, you are under
2 oath.

3 Counsel, you may proceed, Mr. Siegal.

4 MR. SIEGAL: Thank you, your Honor. I'll just start
5 where we left off because I'm a little bit confused.

6 Q. You were present during the apartment search; is that
7 correct?

8 A. Correct.

9 Q. Were you the agent who found the suitcase or was that
10 somebody else?

11 A. Another agent.

12 Q. So, but it is your understanding that the suitcase was
13 found in the closet in the office?

14 A. No. There was a closet that was further down the hallway
15 closer to like a bathroom I believe. It's hard for me to
16 remember exactly but it was not the closet inside the office,
17 separate closet, more like a coat -- not a coat, but more not
18 office materials, I guess.

19 Q. I'm going to ask you to look please --

20 MR. SIEGAL: Your Honor, I'd like to mark as Exhibit
21 11 a full set of the photographs.

22 THE COURT: So, this is really just a subset of what's
23 already been admitted as government --

24 MR. FERRARI: 15.

25 MR. SIEGAL: One-five is the disk. These are prints,

H1NAAWEI6

Komar - Cross

1 I think.

2 THE COURT: So, you want to enter the full set of hard
3 print?

4 MR. SIEGAL: Yes, your Honor.

5 THE COURT: All right. So --

6 MR. FERRARI: They're in evidence. No objection, your
7 Honor.

8 THE COURT: OK.

9 MR. SIEGAL: I'm going to mark them as Defense Exhibit
10 11 and show it to them.

11 THE COURT: I will admit again what is now the full
12 set of Defense 11.

13 MR. SIEGAL: I am leaving it open to a particular
14 page, your Honor, which I'll make reference to.

15 THE COURT: Can I have a copy?

16 MR. SIEGAL: I'm sorry, your Honor.

17 (Pause)

18 THE COURT: Thank you.

19 BY MR. SIEGAL:

20 Q. Is it fair to say that none of the photographs you looked
21 at on your direct show a picture of that suitcase in a closet?

22 THE COURT: Any way you can identify for the record
23 what you're pointing to?

24 MR. SIEGAL: Sorry, your Honor, yes. The suitcase has
25 been marked as Exhibit 22, Government Exhibit 22 that's in the

H1NAAWEI6

Komar - Cross

1 courtroom that's sitting over there to my right.

2 Q. Do you see that?

3 A. Yes.

4 Q. And Mr. Ferrara showed you several pictures during your
5 direct testimony but none of those are a closet with that
6 suitcase in it?

7 A. That's correct.

8 Q. If you could look please at the picture that I just put in
9 front of you which is part of --

10 THE COURT: OK. That's what I was asking you to
11 identify.

12 Q. If you look now at Defense Exhibit 11 and I think you'll
13 see very small numbers and letters.

14 THE COURT: In the lower right.

15 Q. In the lower right, do you see there's a picture at what
16 looks like DJ 0043?

17 A. Yes.

18 Q. Do you see that picture? There's a big black suitcase
19 right there in the middle of the bedroom?

20 A. Um-hmm.

21 Q. Is that a picture of that suitcase?

22 A. No, it is not.

23 Q. You are saying it's a different suitcase?

24 A. Correct.

25 Q. Looking at Exhibit 15-A, Government Exhibit 15-A, do you

H1NAAWEI6

Komar - Cross

1 see that?

2 A. Yes, 15-A.

3 Q. Do you see there's three boxes stacked up and then behind
4 it, does that appear to be a bag of garbage?

5 A. There is a bag of garbage, yes.

6 Q. Does it look to you like that bag of garbage has a sort of
7 a red string tie at the top?

8 A. Yes, it does.

9 Q. It's similar to the string tie white garbage bag that's in
10 Government Exhibit 15-D; do you see that?

11 A. It's a similar bag, yes.

12 Q. But you're saying -- do you know or do you not know that
13 there's a different garbage bag than the one?

14 A. That's a different bag.

15 Q. Different garbage bag?

16 A. Yes.

17 Q. So one garbage bag you took, the other you didn't take?

18 A. That's correct.

19 Q. Did you personally observe the suitcase opened with the bag
20 of garbage in it?

21 A. Yes, I did. Well, it was opened already to find it and
22 then they showed me where it was when I came over.

23 Q. So, you were in some other location in the apartment?

24 A. They brought to my attention that they had opened the
25 suitcase containing a bag full of trash. I came over. They

H1NAAWEI6

Komar - Cross

1 had not pulled the bag of trash out. They had kept it in the
2 suitcase. And I saw them remove that bag and place it on the
3 floor and take out the contents for photograph.

4 Q. I don't know that I want you to do this exercise right now
5 but perhaps we'll have an opportunity to look through these
6 pictures. Are you aware there's a photograph that exists of a
7 bag of garbage inside of the suitcase?

8 A. I'm not sure if there's a photograph of that.

9 Q. Your Honor, on direct Mr. Ferrara offered the suitcase in
10 evidence. I don't know whether he intended to or not offer as
11 well the several folders of materials that are in the suitcase
12 but we would like to offer all that as a Defense Exhibit or we
13 can agree that it's part of Government Exhibit 22?

14 MR. FERRARI: Your Honor, I don't have a problem with
15 the documents Mr. Siegal is referring to. However, that is a
16 subset of what was found in the bag and we're happy to ask,
17 we're happy to show Agent Komar some other documents found in
18 bags. It is important that the Court understand everything
19 that was found in the bag because it's a subset.

20 THE COURT: So, there are, I gather, documents in the
21 bag still there and admitted presumably with Exhibit 22.

22 MR. FERRARI: That's fine. Mr. Siegal is right that I
23 didn't realize they were actually sitting in there at that
24 point but that's fine. On redirect I can ask Agent Komar about
25 to few other documents that we found.

H1NAAWEI6

Komar - Cross

1 THE COURT: OK. Well, Exhibit 22 has been admitted
2 and it's admitted with the set of documents that currently is
3 contained therein.

4 MR. SIEGAL: Your Honor, I know your Honor asked us
5 this morning if we would make copies of those but during the
6 discussion we had with the government over one of the breaks,
7 it became clear that that's impractical in part because they
8 have a concern which is I think legitimate of a potential for
9 chain of custody issues with respect to those items. So, what
10 I would like to do if I may with your Honor's permission is
11 take some of those envelopes and bring them up to the agent and
12 show them to him.

13 THE COURT: Hang on. Mr. Ferrara, how do you want to
14 handle this?

15 MR. FERRARI: We don't have a problem with Mr. Siegal
16 showing those documents to the agent. I don't think Mr. Siegal
17 intends to suggest to the Court that that's all the documents
18 that were found in the bag. I'll work as Mr. Siegal does to
19 find those other documents as well as so we can have a complete
20 set. And if he wants to also ask Agent Komar about those or I
21 can. I have no problem with Mr. Siegal showing some of the
22 physical evidence to Agent Komar.

23 THE COURT: OK. Am I right to understand that
24 ultimately everyone will agree to the admission of the full,
25 for purposes of this hearing, to the full set of documents

H1NAAWEI6

Komar - Cross

1 contained in the bag?

2 MR. FERRARI: The government agrees to the admission
3 of what your Honor just described.

4 THE COURT: OK. Mr. Siegal, there's a separate
5 question of agreeing as to what that is I suppose or
6 establishing what that is. But, Mr. Siegal, in principle is it
7 your desire to have admitted all of the documents that were
8 found in the bag. Again, it's a separate question of how we
9 establish what that was.

10 MR. SIEGAL: I don't know that I know, your Honor,
11 what other documents were found in the bag but I don't have an
12 objection to s materials that were found in the bag being
13 testified to as being part of that same set if that's what
14 actually happened.

15 THE COURT: All right. So, I understand we're going
16 to be discussing the documents that were admitted along with
17 the bag in government -- what was the number, Mr. Ferrara?

18 MR. FERRARI{: 22.

19 THE COURT: With the government's careful caveat that
20 what's currently in the bag is not everything that was in the
21 bag.

22 MR. FERRARI: That's our understanding, yes, your
23 Honor. We're happy to do that on redirect or if Mr. Siegal
24 wants to do it.

25 THE COURT: You can do it on redirect.

H1NAAWEI6

Komar - Cross

1 MR. SIEGAL: Should I do it up here?

2 THE COURT: Why don't you come around, counsel.

3 BY MR. SIEGAL:

4 Q. Special Agent Komar, I've pulled some of the materials out
5 from the bag that's been marked as Government Exhibit 22.

6 Showing you what looks like a document relating to erythromycin
7 prescription for Mr. Wei. Would you regard that as responsive
8 to the warrant?

9 A. No. It's a prescription not responsive.

10 Q. OK. Would you regard a document regarding Michaela Wei's
11 dentist appointment responsive to the warrant?

12 A. Not the actual appointment information. However,
13 Ms. Michaela's Wei's address is of relevance.

14 Q. So, is that document responsive or not responsive? You
15 would have regarded that as responsive because her name is on
16 it?

17 A. It is showing the use of an address we believe was used for
18 this investigation.

19 Q. This is a document that purports to be half of a tennis
20 double schedule. Do you regard that --

21 THE COURT: Just so I understand the process, agent.
22 So, for example, if one of the other members of the team came
23 and said Agent Komar is this in or out, what would you have
24 said?

25 THE WITNESS: These documents specifically, your

H1NAAWEI6

Komar - Cross

1 Honor, this instance or in general?

2 THE COURT: I'm using this instance to understand what
3 happened in general.

4 THE WITNESS: Well, this was a little bit of an oddity
5 once we, the term of this was determined that this was trash
6 and such someone's attempt to potentially destroy evidence, I
7 contacted AUSA David Massey to let him know what we came
8 across. It was his decision and my decision with my supervisor
9 that we would take all of this to review at a later point in
10 time because it was going to be a burdensome process especially
11 with the number of torn documents.

12 THE COURT: I hadn't quite appreciated that. So, that
13 it's your understanding that what's now contained in that
14 folder or manila envelope of material that has come in as part
15 of the Government Exhibit 22 that that's sort of is the content
16 of the trash bag sort of with the trash sorted out essentially?

17 THE WITNESS: Yes. So this is the series of documents
18 combined with the other series that we've pulled out to piece
19 together. However, these were just documents that we took. I
20 had to go through them at a later point in time to determine.

21 THE COURT: Where in the bag, in the suitcase bag in
22 addition to the trash can, were there other documents in there?

23 THE WITNESS: I'm sorry.

24 THE COURT: In the black suitcase which has been
25 admitted as Government Exhibit 22 that you've testified, the

H1NAAWEI6

Komar - Cross

1 trash bag containing a variety of documents as well as trash
2 was in that bag, were there other contents, other things in the
3 black suitcase?

4 THE WITNESS: No. There was just the trash bag.

5 THE COURT: So, everything that we're going through
6 now as the contents of the suitcase, Government Exhibit 22, was
7 contained in the trash bag that was contained within the
8 suitcase.

9 THE WITNESS: These documents were contained within
10 the trash bag within the suitcase.

11 THE COURT: Got it.

12 MR. SIEGAL: I am going to go into another envelope
13 from the same exhibit.

14 Q. Here is a document related to a prescription for Ben Wei
15 for Tretinoin; do you see that?

16 A. Yes.

17 Q. Would that have been called for by the search warrant?

18 A. This is not relevant.

19 Q. OK.

20 THE COURT: All right. Mr. Siegal, I get the point
21 and I understand the testimony as to how Agent Komar processed
22 all of the material he obtained in the trash can.

23 Q. So, Mr. Komar, after you sorted through what was in the
24 trash as you described it, did you -- and you decided some of
25 it at least was not called for by the search warrant, did you

H1NAAWEI6

Komar - Cross

1 return any of that material?

2 A. No, we did not.

3 Q. To the Weis?

4 A. No, we did not.

5 Q. You kept it all?

6 A. Yes, we still have custody of it.

7 THE COURT: Just to finish the point in my head on
8 this suitcase, we had an exhibit, Mr. Ferrara, that had a
9 diagram of the home?

10 MR. FERRARI: Yes. I believe that's 11, your Honor.

11 THE COURT: Government 11? Do you have that, agent?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Mine is difficult to read but can you
14 identify on using this diagram where the suitcase was found.

15 MR. FERRARI: Your Honor, I'm going to -- actually,
16 I'll call it object it to your Honor's question. In a sense I
17 had planned actually to redirect the agent using a different
18 exhibit that I think will refresh his memory, so I would ask
19 that I have the opportunity --

20 THE COURT: You don't know that his memory needs
21 refreshing. Have a seat.

22 Now, you have lots of detailed memory of this day and
23 this search and so it's a question you will answer looking at
24 this document whether you know whether, you can recall where
25 the suitcase was found.

H1NAAWEI6

Komar - Cross

1 THE WITNESS: I can recall it was outside of a
2 bathroom. I can't recall if it was the first or second floor,
3 your Honor.

4 THE COURT: So, a closet outside the bathroom.

5 THE WITNESS: I'm just trying to take myself back to
6 that. I'm not able to tell from the sketch, your Honor.

7 THE COURT: OK. You may proceed.

8 MR. SIEGAL: Thank you.

9 Q. You spoke on direct, Agent Komar, about how you were the
10 person responsible for the search warrant and I think that you
11 said you helped prepare Exhibits A and B. Did you also help
12 prepare Exhibit C to the search warrant and I'll refer you to
13 Government Exhibit 3 in evidence.

14 A. I'm sorry. What number again?

15 Q. Number three.

16 A. Your question again? I'm sorry.

17 Q. Did you help prepare Government Exhibit Three?

18 A. I reviewed Exhibit Three. I didn't help prepare. I did in
19 the --

20 Q. Sorry. Government Exhibit Three, Exhibit C in that is what
21 I'm asking about.

22 A. So, Exhibit C of Government Exhibit Three, I did not
23 prepare. However, I did review it.

24 Q. Did you understand it at the time that you went and sought
25 that search warrant?

H1NAAWEI6

Komar - Cross

1 A. Yes, I did.

2 Q. Do you see in subparagraph A where it makes reference to
3 determining whether any electronic item in particular has
4 contraband on it? Do you see that?

5 A. Yes.

6 Q. What did you understand that meant? What was contraband in
7 connection with looking at electronic evidence?

8 A. I can't say for sure what that means right there. I mean
9 Exhibit C is a document that is utilized by our forensic
10 examiners. I understood and discussed it with them how things
11 would be searched. However, I don't have the training to speak
12 specifically about how all these things were going to
13 transpire.

14 Q. Sorry. I'm going to refer specifically to paragraphs A, B
15 and C which is about in my understanding at least what happens
16 with what you do on-site in deciding whether or not to take or
17 image or review on-site electronic items. If you could explain
18 please, what you understood you were required to do when it
19 came to a piece of electronic evidence that you thought was
20 responsive to the warrant. Would you review it on-site, image
21 it or take it and how would you make those determinations?

22 A. My understanding is we would attempt to image it on-site if
23 practical but I defer to my technically trained personnel to
24 assist with that decision. So, if they told me that with the
25 goal of initially of imaging on-site whether that was a

H1NAAWEI6

Komar - Cross

1 practical or able to do that, I made that decision with them.

2 Q. So, the issue in terms of whether or not it would be imaged
3 versus seized would be whether or not it was practical to image
4 it on-site?

5 A. That and along the terms of this exhibit.

6 Q. Well, that's what I'm asking you, Matt.

7 A. I understand.

8 Q. What in the exhibit says you are required to do to make the
9 determination about whether you seized or imaged something?

10 A. I mean, basically, my understanding is that an attempt is
11 made to image and then paragraph B states within a reasonable
12 amount of time without jeopardizing the ability to preserve.

13 Q. So, if you could image it within a reasonable amount of
14 time without damaging the data then that would be plan A; is
15 that fair to say?

16 A. That's fair to say.

17 Q. Taking a look at Exhibit A to Government Exhibit C -- sorry
18 Government Exhibit 3, if you could look please to paragraph 7
19 of that exhibit?

20 A. Of Exhibit A.

21 THE COURT: Government Three as in the Exhibit A
22 attachment.

23 MR. SIEGAL: Exhibit A to the search warrant.

24 (Pause)

25 A. Yes.

H1NAAWEI6

Komar - Cross

1 Q. Do you see how paragraph 7 describes several different
2 types of electronic media, right?

3 A. Um-hmm.

4 Q. And then it has a statement that says used by or in
5 connection with the individuals and entities listed in Exhibit
6 B?

7 A. Um-hmm.

8 Q. Do you see that and then Exhibit B that's a list of names?

9 A. Yes.

10 Q. Am I correct in understanding that if a computer or device
11 was being used by a person on Exhibit B then that was something
12 you felt you could either image or seize, right?

13 A. Yes.

14 Q. What did it mean to say that a computer was used in
15 connection with any of those people? What did you understand
16 that to mean?

17 A. To have any information I guess related to. So used in
18 connection with the individuals and entities listed in Exhibit
19 B would be used by someone directly or indirectly but you know
20 of those people.

21 Q. How is an item used indirectly?

22 A. I guess you could say that a person could own a computer
23 which would make sense but they could also use somebody else's
24 computer or somebody else's phone.

25 Q. But aren't those scenarios covered by the use, by language?

H1NAAWEI6

Komar - Cross

1 A. Yeah, I guess you're right, yes.

2 Q. Well, I guess my question is was it the plan of the search
3 team to look within the files of these electronic items and
4 search on premises to see whether they were files within those
5 items relating to any of the people on the list?

6 A. That was not the intention. The process would be that we
7 would have to make sure we imaged it and had a pure copy to
8 where we would then be able to review it. So, if you have
9 difficulties in imaging something then you can't review it
10 on-site. So, that's what happened essentially was there was
11 difficulties or decisions made that imagings was not going to
12 be done on-site, so you can't really review without imaging.

13 Q. You mean reviewing was not going to be down on-site?

14 A. Correct.

15 Q. Imaging was done on-site for a amount of items?

16 A. Whenever possible, yes.

17 Q. Now, there were a number of employees at New York Global
18 Group whose names don't appear on the Exhibit B list, right?
19 Brandon Stewart, Melinda Cruz, those peoples names are not on
20 the Exhibit B list, right?

21 A. I'd have to look. I can't remember.

22 Q. They're phones were imaged though, everybody who was in the
23 office had their phones imaged that day, right?

24 A. I believe so.

25 Q. Including the receptionist, right?

H1NAAWEI6

Komar - Cross

1 A. I can't even recall her name.

2 Q. But no work was done to determine whether or not anything
3 in her phone was used in connection with anybody on the phone,
4 anybody on the list. They just took her phone cause she was
5 there, right?

6 A. Yes.

7 Q. Now, if you would look please at Government Exhibit 7.

8 MR. SIEGAL: I'm not sure that's been offered but I
9 would like to offer that, your Honor, if it isn't?

10 MR. FERRARI: No objection your Honor.

11 THE COURT: Government's 7 is admitted.

12 (Government's Exhibit Seven received in evidence)

13 Q. Do you see how near the bottom of that exhibit it lists --
14 well, am I correct in understanding that this is part of the
15 log of what was seized from the 40 Wall Street office of New
16 York Global Group?

17 A. That's correct.

18 Q. Do you see that there's a reference to near the bottom one
19 two blackberries followed by two iPhones; do you see that?

20 A. Yes.

21 Q. And do you see how four out of those five says "imaged" and
22 one says "image" which is then crossed out and says "seized"?

23 A. Um-hmm.

24 Q. Do you know which the seized blackberry was, who that
25 belonged to?

H1NAAWEI6

Komar - Cross

1 A. It was Mr. Wei.

2 Q. Was there some logical problem why Mr. Wei's phone could
3 not be imaged on-site as opposed to seized?

4 A. Yeah, I believe there was difficulties with the seize of
5 it. So, I was told they weren't going to be able to finish
6 on-site. It was going to take a long period of time.

7 Q. Did you tell Mr. Wei that your machine was broken? Is that
8 why you told him his phone had been seized while everybody
9 else's got imaged?

10 A. I don't recall ever telling him that.

11 Q. But you're saying that in the four hours that you were at
12 the offices of New York Global Group his phone had to be seized
13 while everybody else's was imaged?

14 A. It was my understanding that it would take -- it was a
15 lengthy process because of the size of the phone, so it was
16 taken.

17 Q. Now, Mr. Wei never got his phone back, did he?

18 A. I can't speak to that. I did not return it to him.

19 Q. Did you tell him he was going to get it back the next day?

20 A. I don't recall telling him that.

21 Q. You don't recall?

22 A. No.

23 Q. How long do you think it would take to image somebody's
24 Blackberry once you got it back to FBI offices?

25 A. I've seen phones take anywhere from a day or two to

H1NAAWEI6

Komar - Cross

1 download.

2 Q. But it was never returned, was it, not one day, not two
3 days later?

4 A. I did not return the phone.

5 Q. Now, with respect to the electronic seize of the apartment
6 is it your understanding that the SD cards, the -- any thumb
7 drives, all computers in that location that they were just
8 going to be seized, was that what you understood?

9 A. Yeah. We had lost, initially, during the first search
10 warrant of the office we had four card examiners. We only had
11 one card examiner on location at the residence to the time of
12 search so he was not able to image on-site.

13 Q. He was not able to image anybody's phone on-site?

14 A. I can't recall if he did attempt it or not but I remember
15 we took a lot of things because we had difficulty with only one
16 person.

17 Q. Now, Michaela Wei, her phone was seized also from the
18 apartment?

19 A. I believe so but I can't say for sure.

20 Q. Was there some reason why you couldn't get more card agents
21 to go to the apartment of Mr. and Mrs. Wei?

22 A. It was just a resource issue that we lost people. People
23 had other things to do, other cases.

24 Q. So, Mrs. Wei had to look up the phone numbers of her
25 babysitters and then hand over the phone?

H1NAAWEI6

Komar - Cross

1 A. I believe that was what was done but I wasn't there.

2 Q. And all the other electronic data from her house was also
3 taken pursuant to those warrants that day, right?

4 A. Yes.

5 Q. So she was left then without her appointment calendar,
6 right?

7 A. If it was contained on electronic evidence that was
8 relevant to the search warrant.

9 Q. Had all of her contacts, right, those would have been on
10 her phone just like most people these days?

11 A. Yes.

12 Q. And any memos or notes to herself that might have been
13 included on her phone, that was all information that she no
14 longer had access to, right?

15 A. If they were on her phone I guess, yes.

16 Q. Family photographs on her phone?

17 MR. FERRARI: Objection on 403 grounds, your Honor.

18 THE COURT: Her whole phone was taken?

19 Q. Are you familiar with the fact that her data wasn't
20 returned to her in any form for three weeks?

21 A. The data from her phone wasn't returned?

22 Q. The data from the entire apartment, all the --

23 A. I returned the data. I returned the original digital
24 evidence from the residence to counsel for Mr. Wei once it was
25 imaged.

H1NAAWEI6

Komar - Cross

1 Q. So, you're not familiar with the fact that she didn't get
2 that back until February 20?

3 A. I believe that was -- I'm aware of that, yes.

4 Q. Now, Agent Komar, do you see those boxes of files and
5 materials over there?

6 A. Yes, I do.

7 Q. Is it your understanding that that's the entire set of
8 physical materials that were seized from the office and the
9 apartment on January 25, 2012?

10 A. Yes, that's my understanding.

11 Q. Are you aware whether any hard copy materials were ever
12 returned to the Weis?

13 A. I'm not aware of returning those myself or aware of anybody
14 else.

15 Q. With regard to the computer evidence that was seized, the
16 electronic evidence that was seized are you aware of any of
17 that evidence either being purged or returned to the Weis out
18 of the FBI's files?

19 A. So, are you saying the originals returned or the
20 information deleted from our files?

21 Q. The information deleted from our files?

22 A. I'll not aware of any of that occurring.

23 Q. You never asked for any of that?

24 A. No, I did not.

25 Q. And you were reassigned off of this investigation in about

H1NAAWEI6

Komar - Cross

1 February of 2013, right?

2 A. That's correct.

3 Q. So as far as you know do you have any idea how many times
4 employees of FBI may have gone in and searched through the
5 electronic evidence between 2013 and today in 2017?

6 A. I'm not aware of how many times people have accessed that.

7 Q. So, the original search of the office took about four or
8 five hours; is that about correct?

9 A. That's fair.

10 Q. At the time you sought the search warrant you were for the
11 office, you were aware that there might be some documents
12 relating to the business at the apartment of Mr. and Mrs. Wei,
13 right?

14 A. When I sought the search warrant?

15 Q. When you originally sought the search warrant for the
16 office -- pardon me -- on January 25th and when you were
17 drafting that affidavit in anticipation of it, you actually
18 understood that you had some evidence that suggested that maybe
19 there's some business related evidence at the apartment of
20 Mr. and Mrs. Wei, right?

21 A. I don't recall becoming aware of documents, records being
22 at the residence until the day of the search which was
23 January 25.

24 Q. Can I just direct your attention to your affidavit of
25 January 24 and paragraph 19D of that affidavit which is

H1NAAWEI6

Komar - Cross

1 marked -- sorry -- the exhibit itself is marked Government
2 Exhibit Two. Do you see there on page 31, actually, that
3 there's reference to the notion that certificates may have been
4 sent to the West Street apartment?

5 A. Yes, I was aware of the fact that certificates had been
6 sent to that location. However, I had no reason to believe
7 that they were still there.

8 Q. OK. So you didn't apply for a search warrant originally
9 for the apartment until after you were at least most of the way
10 through the search of the office, right?

11 A. In the early stages but that's when we found out.

12 Q. Is it fair to say that one of the things you were looking
13 for when you went to the offices of New York Global Group were
14 stock certificates relating to certain of the entities you
15 associated with Mr. Wei?

16 A. Yeah, I believe that was Covering Attachment A of the
17 search warrant.

18 Q. And when you spent four or five hours -- and that's because
19 you had a theory that Mr. Wei was having these companies
20 suggest that there were shareholders out there who supposedly
21 held stock in these companies but who never actually got the
22 stock; that was your case theory in part?

23 A. That's correct.

24 Q. So, you expected to find that Mr. Wei himself was retaining
25 all these stock certificates to some of them?

H1NAAWEI6

Komar - Cross

1 A. That was a possibility, yes.

2 Q. So when you went to the offices of New York Global Group
3 and you looked for those, right?

4 A. That was covered in Attachment A, yes.

5 Q. And in fact some of the agents on your team asked Mr. Wei
6 whether or not the stock certificates might be contained within
7 the sheetrock walls of the office, right?

8 A. I'm not aware of an agent asking that question.

9 Q. There was some thought perhaps of ripping open the walls in
10 office, right?

11 A. I'm not aware of ever transpiring.

12 Q. But that's how important the stock certificates were to
13 your investigation, right?

14 A. They were important but we'd never expressed any type of
15 threats to open walls to Mr. Wei.

16 Q. Whether you did or didn't you never found any stock
17 certificates at the offices of New York Global Group, did you?

18 A. I don't believe so.

19 Q. Is it fair to say that part of the reason you got a new
20 search warrant to go to the home of Benjamin and Michaela Wei
21 was to find those supposed stock certificates?

22 A. Yes. They were also covered in the attaching for the
23 search warrant of the residents.

24 Q. Did you find any stock certificates at the home of Mr. Wei?

25 A. I don't believe we did.

H1NAAWEI6

Komar - Cross

1 Q. You went so far as to ask Michaela Wei to open up a safe in
2 the apartment, right?

3 A. That's correct.

4 Q. There were no stock certificates there either, were there?

5 A. Not to my knowledge.

6 Q. And do you have no recollection of anybody suggesting that
7 maybe the walls of the apartment should be ripped open looking
8 for the stock certificates?

9 A. No, I'm not aware of making that communication.

10 Q. If you could take a look please at Government Exhibit One
11 which is at ops plan you referred to earlier.

12 A. Yes.

13 Q. Do you see on the second page of the op plan there is a
14 reference. It says at the top of the page there it says on
15 Monday, January 23 a search warrant was issued by the Southern
16 District of New York. Do you see that?

17 A. Yes, I'm ware of that.

18 Q. That is not correct?

19 A. That's incorrect.

20 Q. Incorrect. This is written in the past tensed as if it's
21 happened already, right?

22 A. I'm not entirely. Are you referring to that sentence?

23 Q. That sentence says a search warrant was issued on
24 January 23rd, right?

25 A. That sentence is written in the past, yes.

H1NAAWEI6

Komar - Cross

1 Q. Did you write this ops plan before or after you got the
2 warrant?

3 A. I can't recall.

4 Q. Did you originally intend to get the warrant on the 23rd
5 and then ultimately not get it until the 24th?

6 A. I can't recall.

7 Q. One of the things you said on direct was that you offered
8 at the ops meeting or the debriefing the day before the
9 execution of search warrant to e-mail the search warrant
10 affidavit to your colleagues, right?

11 A. That's correct.

12 Q. And you said you believed somebody asked for it?

13 A. Yes, I'm aware of that. A few agents asking for it.

14 Q. You aware that any of the agents actually read the 97 page
15 affidavit that you e-mailed them that evening before the search
16 warrant before executing warrant?

17 A. I'm aware of at least one agent, yes.

18 Q. Of the 20 agents who did the search, you are aware of one
19 who read it?

20 A. There were 15, but yes.

21 Q. When you say "15" is that because some people you are not
22 counting as agents?

23 A. I think 20 was a little bit large. There is an exhibit
24 with everybody's title.

25 Q. Would you agree that that exhibit would control the number

H1NAAWEI6

Komar - Cross

1 of people who were there?

2 A. That's the control log of the premise so, yes.

3 Q. Now, you have, as the case agent, control over when
4 actually you had the search executed, right?

5 A. That's correct.

6 Q. You had a ten day window after obtaining the search warrant
7 within which to actually execute it, right?

8 A. I believe it was ten days yes.

9 Q. But you opted to have the search warrant executed first
10 thing in the morning the day after the four p.m. briefing
11 session, right?

12 A. That's correct.

13 Q. So, you didn't really expect all those agents to read a 97
14 page search warrant affidavit between four or five o'clock p.m.
15 the night before a search execution and the following morning,
16 right?

17 A. Some did it. So, my expectation is that people would
18 prepare themselves for the search warrant.

19 Q. You could have if you wanted to set the search for several
20 days after the briefing to give everybody a chance to read the
21 affidavit for the search warrant?

22 A. Could have.

23 Q. You elected not to?

24 A. We elected to do it the date we had chosen for certain
25 reasons.

H1NAAWEI6

Komar - Cross

1 Q. You didn't create any 302 report of what was said in the
2 briefing, did you?

3 A. That wouldn't be in normal course.

4 Q. Would it be normal course that no such memo was written?

5 A. We would not take notes and memorialize what was said
6 during that meeting.

7 Q. Why was that?

8 A. It is an internal meeting. It's nothing that I would
9 memorialize in the report.

10 Q. Well, in this case you had a warrant that's on its face was
11 a search warrant for the offices of New York Global Group,
12 right?

13 A. Correct.

14 Q. And if you look at Exhibit A to the search warrant -- and
15 again, I'll refer you to Government Exhibit Three. If you
16 would take a look for a moment please at the 12 single-spaced
17 passages of Exhibit A and tell me whether or not there was any
18 format or type of data or record that is not in your mind
19 covered by the passages in Exhibit A, just format, not content?

20 A. And I'm not sure I understand the question.

21 Q. Would you agree that Exhibit A is a very broad list of
22 types of things?

23 A. I wouldn't necessarily categorize it as "broad". I would
24 say it's detailed.

25 Q. And nevertheless each of those paragraphs refers to looking

H1NAAWEI6

Komar - Cross

1 for things like photographs, address books, personal financial
2 records, computers, flash drives, videotapes, audiotapes,
3 identification documents, all sorts of types of documents,
4 right?

5 A. Correct.

6 Q. Relating to New York Global Group, right?

7 A. And the other persons in Exhibit B.

8 Q. Right. But New York Global Group is right at the top of
9 that list.

10 A. Yes, it is at the top.

11 Q. Did you have a concern, sir, that the face of that warrant
12 said effectively take every kind of material I can think of
13 relating to the business regarding search, did you have a
14 concern about that issue?

15 A. No, I did not.

16 Q. Never occurred to you that that might be a warrant that
17 covered everything in the office?

18 A. I don't feel it covered everything in the office.

19 Q. So, it wasn't a concern for you that at the briefing you
20 should further particularize or specify what it was that they
21 were looking to seize at the searches?

22 A. Can you -- I just don't understand your question. Sorry.

23 Q. Is it your testimony that it was not important to make it
24 clearer than the warrant itself what was seizable at the
25 pre-search briefing that you and Mr. Massey did?

H1NAAWEI6

Komar - Cross

1 A. We discussed Attachment A. I can't say we -- that was what
2 was discussed. I can't recall how level of detail we got into.

3 Q. So, it wasn't important to you that you should take notes
4 on what it was precisely what was said at the pre-search
5 briefing that was supposedly used to help the agents understand
6 better what they were supposed to be seizing?

7 A. No, notes were taken.

8 Q. Sir, before you searched the offices of New York Global
9 Group were you aware that there was an in-house lawyer at New
10 York Global Group?

11 A. Yes, they were aware of that.

12 Q. And you specifically excluded his office from the search,
13 right?

14 A. That's correct.

15 Q. Now --

16 THE COURT: Sorry. Just apologize for interrupting
17 the flow again, but just to follow-up on an earlier point.

18 Was it your view, Agent Komar, that on the face of the
19 warrant and taking into account the exhibits that this would
20 provide sufficient guidance to the agents without one?

21 THE WITNESS: Yes, I do. It's very typical to -- what
22 other search warrants I have been involved in I'd received.
23 So, it's a very typical format and detail that I have been
24 given on numerous search warrants.

25 THE COURT: So, without the meeting and without the

H1NAAWEI6

Komar - Cross

1 affidavit, no concerns about clarity?

2 THE WITNESS: I wanted -- I guess, I understand. Let
3 me explain that the affidavit is 90 pages long and it's a very
4 detailed affidavit. So, it's not normal course for AUSA Massey
5 to come over and attend a logistical safety previous going for
6 a search warrant. So, we thought it was a good opportunity for
7 him to come over and make him self available to explain what
8 was going on and the type of things we were taking, as well as
9 just to go over it with him cause it's just very detailed, just
10 to help communicate and answer any questions and make himself
11 available to other members of the team.

12 THE COURT: OK.

13 Q. Do you recall Mr. Massey or yourself saying anything at the
14 meeting about anything of any nature that the agents should not
15 be seizing or taking?

16 A. I don't recall anything discussed at that.

17 Q. Sir, the day of the search -- let me step back. Before you
18 went to search I think you just testified that you were aware
19 that there was a man named Jim Baxter who was a lawyer for New
20 York Global Group?

21 A. Correct.

22 Q. You had actually met Mr. Baxter eight or nine months
23 earlier, right?

24 A. I can't say exact time but, yes, I had met him before.

25 Q. You were aware that normally Mr. Baxter worked in the

H1NAAWEI6

Komar - Cross

1 office. He had his own office space within the offices, New
2 York Global Group?

3 A. That is my understanding.

4 Q. Was one of your sources of information for your search
5 warrant application was a current employee of New York Global
6 Group at the time, a confidential source?

7 A. Yes.

8 Q. So, he was working there everyday, right?

9 A. There that day?

10 Q. He was working in the offices of New York Global Group
11 everyday during the timeframe leading up to when you executed
12 the search warrants?

13 A. I can't say if he was there every day but my understanding
14 he was still employed by New York Global Group.

15 Q. Did he tell you that Mr. Baxter would not be at the office
16 on January 25, 2012?

17 A. I don't recall learning that information.

18 Q. You don't recall knowing that Mr. Baxter was going to be
19 out at a FINRA hearing all day, the day you executed the search
20 warrant?

21 A. I can't say for sure. I don't recall.

22 Q. So, it's your testimony, sir, that you don't remember one
23 way or another whether you knew before you selected the date to
24 execute the search that the in-house lawyer for the company
25 wouldn't be there the day you executed the search?

H1NAAWEI6

Komar - Cross

1 A. Yeah, I can't say one way or the other. I just don't
2 recall.

3 Q. So you are saying it is possible or you just don't
4 remember?

5 A. Yeah, it's possible. I just don't remember.

6 Q. You were also as a part of your investigation speaking with
7 people at FINRA, right?

8 A. That's correct.

9 Q. They were conducting some separate investigations related
10 to the brokers who you describe in the affidavit?

11 A. Yes.

12 (Continued on next page)

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H1NMWEY7

Komar - cross

1 Q. Do you recall whether any of those FINRA employees told you
2 that Jim Baxter would be at a FINRA hearing the day you
3 executed the search?

4 A. I just don't recall.

5 Q. Did you make a strategic choice to execute the search on a
6 day when you knew the lawyer for the company would be out of
7 the office?

8 A. I don't recall that being a factor in our decision of when
9 we executed the warrant.

10 Q. You don't recall one way or the other?

11 A. I don't recall it coming up. I don't remember it being
12 discussed.

13 Q. You're saying that was just coincidence?

14 MR. FERRARA: Objection, your Honor.

15 THE COURT: Sustained.

16 MR. SIEGAL: I'm trying to move it along, your Honor,
17 if you give me a moment.

18 Q. You testified on direct about the electronic evidence, that
19 you were not able to begin review of the electronic evidence
20 yourself for some time after the searches, right?

21 A. That's correct.

22 Q. And is that in part because the evidence had to be loaded
23 into a search platform?

24 A. That's part of the reason, yes.

25 Q. And also because the taint team had to do some of its work?

H1NMWEY7

Komar - cross

1 A. That's correct.

2 Q. When I say a taint team, I'm referring to a team of agents
3 or lawyers who were looking to make sure that the
4 attorney-client privilege wasn't invaded, right?

5 A. That's correct.

6 Q. You knew before you went to the offices that it was a
7 business office with a lawyer who worked there, right?

8 A. I was aware it was a business office that had a lawyer that
9 worked in-house, yes.

10 Q. And was it fair to say that you had a belief that at least
11 some of the electronic evidence seized at the house and the
12 apartment might contain attorney-client privileged
13 communications?

14 A. It was later brought to our attention that's a possibility.

15 Q. So you could anticipate fairly before you executed the
16 search warrants that a taint team might be needed, right?

17 A. It's possible to expect that, but we had no idea what we
18 were going to incur until we did.

19 Q. You didn't look through the electronic evidence to decide
20 whether there was attorney-client privileged communication on
21 it before you assembled the taint team, right?

22 A. No. I thought you were asking me if I had a taint team set
23 up prior to the search warrant. I thought that was the
24 question.

25 Q. I'll ask you that question. Did you?

H1NMWEY7

Komar - cross

1 A. No, I did not.

2 Q. There wasn't one assembled until after the search was
3 conducted, right?

4 A. That's correct.

5 Q. And indeed a taint team didn't even get started doing its
6 work until June 2012?

7 A. That's correct.

8 Q. You say in your affidavit that you submitted in opposition
9 to this motion that you were involved, at least for a short
10 period of time, in reviewing some of the search evidence in the
11 fall of 2012. Is that accurate?

12 A. The digital evidence?

13 Q. Yes.

14 A. Yes.

15 Q. Where did you conduct that review? At your offices or
16 someplace else?

17 A. At my offices at 26 Federal Plaza.

18 Q. Did you keep any log of your reviews of the electronic
19 search evidence for the work that you did in the fall of 2012?

20 A. We were -- I was marking things as pertinent or
21 nonpertinent, if that's what you mean by a log. Or do you mean
22 something else by a log?

23 Q. When you say you were marking things as pertinent or not
24 pertinent, you were actually leaving some sort of trace of what
25 your work was within what you were reviewing?

H1NMWEY7

Komar - cross

1 A. Yeah. That was my understanding.

2 Q. How were you doing that?

3 A. How was I flagging them?

4 Q. Yes.

5 A. Essentially, it's a screen and you are able to categorize a
6 document you are reviewing or a file you are reviewing as
7 pertinent/nonpertinent or another category that's been
8 developed to be used for the categorization of evidence.

9 Q. You keep using the word pertinent and that's a confusing
10 word to me because I want to understand, do you mean you were
11 flagging the documents because you thought they were helpful to
12 your investigation or because you thought they were responsive
13 to the search warrant?

14 A. I would say both.

15 Q. Both. Did you have two different boxes in the system to
16 check?

17 A. No.

18 Q. So it was an all-or-nothing sort of indication, meaning
19 either it was pertinent/responsive or nothing?

20 A. That was the categories that were used, yes.

21 Q. Let me ask this. I take it that given the length of the
22 list of names on the search warrant that the number of
23 documents that were responsive to the search warrant would have
24 been greater than the number of those documents that would have
25 been either useful or helpful to your investigation, right?

H1NMWEY7

Komar - cross

1 A. Number --

2 Q. Maybe we should look at the search warrant. The search
3 warrant says that you could, for example, take any document
4 that related to Yingmao Wei, right. That's one of the names on
5 the list?

6 A. Yes.

7 Q. If there was an electronic document either at the home or
8 at the office that had the words Yingmao Wei in it, that would
9 be, in your view, responsive to the warrant?

10 A. It had to be pertinent to the search warrant and the
11 violations that we were investigating.

12 Q. Sorry. Now I'm very confused. If a document had Yingmao
13 Wei's name on it and it was on the computer, you are saying you
14 would have not necessarily flagged that as a responsive
15 document or a pertinent document?

16 A. Correct. So it would be a pertinent document if his name
17 was on it and if it fell into attachment A or relevant to the
18 violations that we were investigating. If it was, for example,
19 his name with something irrelevant, then I would not mark that
20 as pertinent.

21 Q. Does the system that you're working with actually have the
22 word pertinent on it or what -- I don't have a sense of what --

23 A. I believe so. It's been -- last time I used this tool was
24 for this review. So we are talking four plus years, I guess.

25 Q. Was it your view if you looked at a document in the

H1NMWEY7

Komar - cross

1 electronic system and none of the names on this list appeared
2 in the document, could you mark that pertinent or not?

3 A. You have the ability to, but it wouldn't be pertinent
4 because it wouldn't be under the terms of the search warrant.

5 Q. So it sounds to me like you first, in your mind, had to
6 decide whether a name on the Exhibit B was in the document and
7 then make a second-level determination about whether or not it
8 was pertinent?

9 A. I would say that's accurate.

10 Q. Now, you said in your affidavit you didn't get very far
11 with the review. How much?

12 A. When you say affidavit, I'm sorry. I'm confused.

13 Q. You submitted an affidavit in connection with this motion
14 in opposition to this motion?

15 A. Correct.

16 Q. I'm sorry. There are many affidavits.

17 A. I just wanted to clarify.

18 Q. In that affidavit you said that you were able to do some
19 review of the electronic documents but you weren't able to
20 proceed very far with it, is that right?

21 A. That's correct.

22 Q. And you were reassigned in February of 2013, right?

23 A. That's right.

24 Q. What percentage of the electronic materials do you estimate
25 you were able to get through before you left and were

H1NMWEY7

Komar - cross

1 reassigned?

2 A. Hard for me to say for sure. Not much. At the time I
3 was -- I had other prioritized cases that took my time up.

4 Q. So it wasn't just this case you were working on; you were
5 working on several other cases at the time, right?

6 A. Yes, a number of cases.

7 Q. By the time you left in February of 2013, not very much of
8 the electronic evidence had been reviewed by you, correct?

9 A. I can't say a percentage or anything like that, but I felt
10 that I didn't get through as much as I wish I would have by
11 that time.

12 Q. Did it ever occur to you to add other people to the
13 electronic review team beside yourself, one single agent, in
14 that year-long period?

15 A. Yes.

16 Q. And how many other agents did you add to the electronic
17 evidence review team beyond yourself before you left the
18 investigation?

19 A. Zero.

20 Q. Zero in an entire year of having that material?

21 A. We were a very busy squad that didn't have the resources.
22 You can only do what you can do with what you have.

23 Q. You were able to get 20 agents to come do the search, but
24 you couldn't get even one or two other bodies to help you go
25 through these hundreds of thousands of electronic documents you

H1NMWEY7

Komar - cross

1 had seized from Mr. Wey's business?

2 A. That's true.

3 Q. Did anybody ever give you a deadline by which the
4 electronic documents ought to be finished being reviewed?

5 A. No. There was never a deadline.

6 Q. So was it your understanding that it was reasonable for the
7 FBI to have one solo agent looking through more than 100,000
8 electronic files and just take as long as it took to get
9 through that documentation?

10 A. I'm not in a position to assess the reasonableness of that.
11 I'm not a boss. I'm not a supervisor. I'm doing the job that
12 I was told to do.

13 Q. Did you at any point in the year-long period that you were
14 in charge of the investigation after the search run any search
15 terms within the documents?

16 A. Yes.

17 Q. Do you have a list of those search terms that you used?

18 A. I don't think there was anything put formally down in terms
19 of search terms. It was based upon my knowledge of the
20 investigation. I'm sure it's fair to say there is probably
21 companies that were listed in Exhibit B that were searched, but
22 I'm sure there is other things that I searched based upon my
23 knowledge of the investigation.

24 Q. You are saying that the electronic search terms you ran may
25 have included names of entities or people that were not on

H1NMWEY7

Komar - cross

1 Exhibit B?

2 A. That were on Exhibit B.

3 Q. Sorry. Are you saying that you limited your use of search
4 terms only to terms on Exhibit B?

5 A. I used Exhibit B to conduct my searches, yes.

6 Q. So we are clear, you are saying you used Exhibit B as a
7 reference for conducting your search term searches in the
8 electronic database?

9 A. Yes. I used Exhibit B.

10 Q. Did you include in your search terms that you used any
11 terms not on Exhibit B?

12 A. Not sure. That's not -- it's not logged down or written
13 down, the terms that I searched, so it's very well possible,
14 yes.

15 Q. When you left the investigation and you handed the case
16 over to Agent McGuire, did you have any way of showing him
17 which electronic files you had reviewed and which ones you
18 hadn't?

19 A. He would be privy to that by accessing the system.

20 Q. So the system would have told him that?

21 A. Yes.

22 Q. That's how he would have avoided doing duplication?

23 A. That is my understanding of how the system works.

24 Q. When you ran search terms through the electronic media, did
25 you run those search terms across all the electronic media at

H1NMWEY7

Komar - cross

1 once or only in parts of it?

2 A. Well, it was only tranche A that I was reviewing, so that
3 would have been the contents of Mr. Wey's office, the server
4 and the thumb drives.

5 MR. SIEGAL: Your Honor, give me one minute, please.

6 Your Honor, they took my watch when I entered the
7 building, so I don't know what time it is. I'm wondering.

8 THE COURT: It's 4:43.

9 MR. SIEGAL: I am going to press through then.

10 Q. You were involved at some level, Agent Komar, in an
11 investigation relating to a hedge fund called Level Global, is
12 that correct?

13 A. I was not -- I had a minimal role with that investigation.

14 Q. You took notes at a proffer given by a cooperating witness
15 in that case?

16 A. Yes. I was asked by the case agents to take notes.

17 Q. That's a separate investigation completely from this one,
18 right?

19 A. Correct.

20 Q. Insider trading investigation?

21 A. Yes.

22 Q. The Level Global hedge fund, that was a \$4 billion hedge
23 fund, right?

24 A. I can't really speak to that.

25 Q. There has been a lawsuit that's been brought about that

H1NMWEY7

Komar - cross

1 investigation. You're aware of that, right?

2 A. Yes. I've been named in the lawsuit.

3 Q. You're named in the lawsuit?

4 A. Yes.

5 Q. But you are not the only one named. A bunch of AUSAs and
6 law enforcement agents have been named as defendants in that
7 case?

8 A. Correct. There is a number of people.

9 Q. You're aware in that case that there was a search warrant
10 that was conducted at the offices of Level Global?

11 A. Yes, I'm aware of the search warrant.

12 Q. And there was an affidavit sworn to by another agent, a
13 Holly Trask of the FBI, is that right?

14 A. I believe she is the one who is the affiant, yes.

15 Q. She is one of your colleagues. Do you know her?

16 A. I know of her. We are not in the same squad. I was
17 assisting in another squad.

18 Q. You're aware that that affidavit supporting that search
19 warrant is based in part on information that supposedly came
20 from a confidential witness who has now been revealed to be a
21 man named Sam Adondakis?

22 A. I was never privy to the affidavit, drafting, reviewing. I
23 have never to this day -- maybe once seen it, but I was not
24 involved in the drafting of it.

25 Q. You met with Mr. Adondakis on at least one occasion?

H1NMWEY7

Komar - cross

1 A. I was present for the proffer session, yes.

2 Q. That was on November 2, 2010?

3 A. Yes, I guess. I am not sure of the exact date.

4 Q. Do you have any recollection at all of the substance of
5 that interview?

6 A. No, I do not.

7 Q. If I asked you whether or not you have any recollection of
8 Mr. Adondakis saying anything about who his sources were for
9 inside information relating to Dell to a man named David Ganek,
10 you don't have any independent recollection sitting here today
11 of that conversation?

12 A. I have no independent recollection.

13 MR. SIEGAL: I think I have to do this by just showing
14 him the documents, your Honor. Pardon me one moment, your
15 Honor.

16 THE COURT: I do have some concerns about time, Mr.
17 Siegal. It's 4:47.

18 MR. SIEGAL: I understand, your Honor. I am going to
19 move quickly through this.

20 If I may approach. I am going to mark this as defense
21 Exhibit 12.

22 THE COURT: Do you have a copy?

23 MR. FERRARA: In your Honor's binder this is 3501-34
24 in Agent Komar's 3500. Your Honor, I tried to flag for your
25 Honor at the top --

H1NMWEY7

Komar - cross

1 THE COURT: I recall.

2 MR. FERRARA: Mr. Siegal is actually -- there was a
3 draft and there was a final. This is the draft that Mr. Siegal
4 is showing. I think it's a little bit after what I had flagged
5 for your Honor.

6 THE COURT: No objection to showing it.

7 MR. SIEGAL: Sorry, your Honor, my 3500 doesn't
8 seem -- I am going to use this and mark this as Government
9 Exhibit 12 and not the other one. Defense Exhibit 12.

10 THE COURT: Not really helpful what you are saying
11 there.

12 MR. FERRARA: Your Honor, Mr. Siegal is now using
13 3501-33, which is the final version of the document, which is
14 the one I flagged for your Honor.

15 THE COURT: Mr. Siegal, are you saying that you are
16 withdrawing what you earlier marked as Defendant's 12, and you
17 are now marking for identification 3501-33 as Defendant's 12?

18 MR. SIEGAL: Yes, your Honor.

19 THE COURT: You may show it to the witness.

20 Q. Sir, if you can take a look at that item, do you recognize
21 generally speaking what it is?

22 A. The form is a CHS reporting document.

23 Q. Is that an official FBI report?

24 A. Yes, it is.

25 Q. Is it often referred to as a 302 or this is not a 302?

H1NMWEY7

Komar - cross

1 A. This is not a 302.

2 Q. But this is the final version of the report that relates to
3 the proffer with Mr. Adondakis that we were just talking about?

4 A. I believe so.

5 Q. Do you see on the first page -- did you write this report?

6 A. You -- there was a unique situation where I drafted
7 something and provided it to the case agent who then completed
8 this report.

9 Q. I see. Well, taking a look at page -- your name is on the
10 front of the report, right?

11 A. As being an attendee, yes.

12 Q. You are the one who took the notes for the meeting, right?

13 A. That's correct.

14 Q. If you can look, after the typewritten pages you'll see a
15 bunch of notes there, handwritten notes. This is a copy,
16 beginning with Bates FBI 00012.

17 THE COURT: Where is that?

18 MR. FERRARA: Your Honor, I apologize. This is partly
19 my fault. I had originally given this to Mr. Siegal about a
20 week ago so he could start to look at it. We had broke it up
21 by 3500 number. So the notes are 3501-35. But that confusion
22 is mine because I did give it to Mr. Siegal together about a
23 week ago. I didn't want to spring it on him.

24 But now we have broken it up. Now we have 3501-35 are
25 the notes Mr. Siegal is now referring to.

H1NMWEY7

Komar - cross

1 THE COURT: Why don't we just include the notes as
2 part of what's been marked for identification as Defendant's
3 12. Those are the notes, again, just for the record
4 identification, 3501-35 with the Bates FBI 12 through 31?

5 MR. SIEGAL: Yes, your Honor.

6 Q. Are those your handwritten notes, sir?

7 A. Yes, they are.

8 Q. I am just going to ask you is to direct your attention to
9 the sixth page of the exhibit, which is the typewritten
10 portion. So FBI -- not the sixth page, but the page Bates
11 stamped FBI 000006. Do you see the third full paragraph down
12 the page begins with the words Chiasson and Ganek?

13 A. Yes.

14 Q. Do you see where it reads Chiasson and Ganek were both
15 interested in the Dell information when CHS told them because
16 the information came directly from contacts at Dell. Do you
17 see that?

18 A. Yes.

19 Q. And is it your understanding that that sentence means that
20 Mr. Adondakis told Mr. Ganek that his information was coming
21 from a contact within Dell?

22 MR. FERRARA: I object to this question. I don't
23 think his understanding is relevant. The question is, does Mr.
24 Siegal want to ask a few questions about his memorialization,
25 accuracy of it, etc? I think this is outside of the

H1NMWEY7

Komar - cross

1 impeachment purpose. Whatever limited impeachment purpose this
2 is might be proper.

3 THE COURT: Sustained.

4 Q. Does that sentence accurately reflect your notes, sir?

5 A. I have to take some time to go through my notes. This is
6 six years ago.

7 Q. I dogeared the page for you there, sir. For everybody
8 else's benefit, if you could look at Bates page FBI 000018. Do
9 you see that?

10 A. Yes.

11 Q. Those are your notes?

12 A. Yes.

13 Q. Right there at the top where it says Anthony and David and
14 then there is some other handwriting. You see with the arrows?

15 A. Um-hum. You are telling me that is what the basis is of
16 that statement.

17 Q. You tell me. I'm not the one who took the notes.

18 A. This report is the best recollection of the occurrence of
19 that meeting. I can't -- I wrote this report out for the best
20 recollection of what I observed at a meeting.

21 Q. So it's fair to say that what's in the typewritten portion
22 is your best recollection of what you understood happened at
23 the meeting?

24 A. No. What I wrote up was not this document. I wrote up a
25 document that was provided to a case agent who reviewed it and

H1NMWEY7

Komar - cross

1 signed it, so that's all I know.

2 Q. I'm sorry. Maybe I'm misunderstanding what I was given.

3 MR. SIEGAL: I am going to mark the draft, your Honor.

4 I'm sorry. I am going to ask that this be marked. I lost my
5 exhibit stickers. I am just going to write it on here.

6 Defense Exhibit 13.

7 THE COURT: What is this?

8 MR. FERRARA: 3501-34, your Honor.

9 THE COURT: Thank you.

10 Q. Sir, taking a look at Defense Exhibit 13, is that your
11 report, the one you're talking about?

12 A. Yes, this is the draft report I'm referring to.

13 Q. So this would be your wording from your notes?

14 A. This is the document that I drafted from what I've heard
15 during that meeting.

16 Q. And if you look at the third page of that document, do you
17 see that in the middle of the page there there is a paragraph
18 that begins with the same words, Chiasson and Ganek. You see
19 that?

20 A. Yes, I see it.

21 Q. Were both interested in the Dell information when CHS told
22 them because the information came directly from contacts at
23 Dell. You see that wording?

24 A. Yes, I see that wording.

25 Q. Is that, in your mind, an accurate transcription of your

H1NMWEY7

Komar - cross

1 own notes?

2 A. That's an accurate transcription of what occurred during
3 that meeting. My notes are used to write a report to help my
4 recollection. They don't need to be exactly what is written
5 into a report. They are used for my recollection to write a
6 report, what occurred at a meeting.

7 Q. So you sitting here today believe that what occurred in the
8 meeting is what you wrote in that sentence?

9 A. Yes. That's the report that I drafted.

10 Q. Are you aware that both Mr. Adondakis and your colleague,
11 Mr. David Makol from the FBI, say that Mr. Adondakis never said
12 to Mr. Ganek, he had an inside source at Dell?

13 MR. FERRARA: Objection.

14 THE COURT: Mr. Ferrara, I can see not going beyond
15 this question, but why not this question?

16 MR. FERRARA: Because what would be impeachment for
17 this witness is whether he took some steps or did something
18 inappropriate, etc., whether one of his colleagues has a
19 different view. This is the sort of thing where this is a
20 classic question at a trial where someone says, and if so and
21 so said something else, they would be lying. This is
22 objectionable. It's speculative to ask this witness to weigh
23 in on competing versions of memories and interpretation.

24 THE COURT: Your objection -- I just want to make sure
25 I understand --

H1NMWEY7

Komar - redirect

1 MR. FERRARA: This witness is not in a position to
2 opine on what other people may or may not think this means.

3 THE COURT: That may be true, but isn't that the
4 question that's been asked? Are you aware? You said he's not
5 in a position to. The question is, are you aware of that?

6 MR. FERRARA: Fair enough, your Honor. If it's just
7 his awareness, I will reserve my objection to a different
8 question. That's fair.

9 THE COURT: You want to repeat the question.

10 MR. SIEGAL: If we could have it read back.

11 THE COURT: Read it back, please.

12 (Record read)

13 A. It was brought to my attention that that came up when I was
14 named in this lawsuit, yes.

15 MR. SIEGAL: Give me one moment, your Honor.

16 Nothing further, your Honor.

17 THE COURT: Redirect. We have got 16 minutes.

18 MR. FERRARA: I have four areas, your Honor, that I
19 think will each be brief. Call it five areas.

20 REDIRECT EXAMINATION

21 BY MR. FERRARA:

22 Q. Agent Komar, just to pick up where we left off, I believe
23 you said you had a limited role in that Ganek investigation, is
24 that right?

25 A. That's correct.

H1NMWEY7

Komar - redirect

1 Q. Which was what?

2 A. I took notes in one or two proffers.

3 Q. And did you do your best to do that accurately?

4 A. Absolutely.

5 Q. Did you deliberately falsify any document in that
6 investigation?

7 A. No, I did not.

8 Q. Would you ever do such a thing?

9 A. No, I would never.

10 Q. Did you ever review the search warrant that is part of the
11 basis of that investigation?

12 A. In conjunction with that search warrant I did review it,
13 yes. I don't think I've reviewed the affidavit in detail.

14 Q. Let's switch gears. Could you look at what's been marked
15 for identification as Government Exhibits 6 and 13.

16 A. Yes.

17 Q. What are those?

18 A. Evidence recovery logs.

19 Q. For the locations we have been discussing?

20 A. Yes. For 40 Wall Street and for 10 West Street, apartment
21 37.

22 MR. FERRARA: Your Honor, the government offers
23 Exhibits 6 and 13.

24 THE COURT: Without objection?

25 MR. SIEGAL: No objection, your Honor.

H1NMWEY7

Komar - redirect

1 THE COURT: Government 6 and 13 are admitted.

2 (Government Exhibits 6 and 13 received in evidence)

3 Q. In Government 13, Agent Komar, could you take a look at
4 item 22.

5 A. Yes. It's labeled as one black suitcase.

6 Q. Do you know or do you remember whether that's the black
7 suitcase we have been referring to as Government Exhibit 21?

8 A. I believe it was, yes.

9 Q. Pardon me. I think it's Government Exhibit 22 is that
10 suitcase. Pardon me.

11 And then if we could look, Agent Komar, at Exhibit 11,
12 and this goes to the Court's question earlier. I'm sorry.
13 Before you flip, did you see where it was recovered based on
14 the log?

15 A. It says area F.

16 Q. If we could look at Government Exhibit 11, towards the
17 bottom of the first page of that exhibit. It's sort of cut
18 off. Do you see the F at the bottom?

19 A. I don't see it on this copy.

20 MR. FERRARA: May I approach, your Honor.

21 THE COURT: You may.

22 Q. It's light, but is there a sort of a cutoff F at the bottom
23 there?

24 A. Yes.

25 Q. Would that F correspond to the log that we just looked at

H1NMWEY7

Komar - redirect

1 in Government Exhibit 13?

2 A. That's correct.

3 THE COURT: My letter is cut off, but I think after E
4 it says it's F, bedroom and bathroom. Is that what you are
5 referring to?

6 MR. FERRARA: Yes, I believe it is.

7 THE COURT: I can't see where F is on the map on this
8 copy.

9 This is the first floor key and F is bedroom and
10 bathroom. Do you have a memory of whether that's where the
11 suitcase was found?

12 THE WITNESS: That seems accurate to my recollection,
13 yes.

14 THE COURT: But that's different than the photo that
15 was shown earlier of a black suitcase in a bedroom?

16 THE WITNESS: Correct. That's a different suitcase.
17 I believe the photo we saw earlier of the trash spread out was
18 in the doorway -- was placed in the doorway of that bedroom, is
19 my understanding. The agent is listed on there who collected
20 that.

21 Q. Now, let's take a look at -- Mr. Siegal showed you
22 Government's 15A. Let's take a look at that.

23 A. OK. Yes.

24 Q. Are you there?

25 A. Yes.

H1NMWEY7

Komar - redirect

1 MR. FERRARA: When the Court is ready --

2 THE COURT: Ready.

3 Q. Mr. Siegal asked you about what appears to be a plastic
4 trash bag behind the boxes towards the back of that photograph.
5 Do you see that?

6 A. Yes. You can see the top of the bag, yes.

7 Q. Correct. And we have established that's the entry photo,
8 correct?

9 A. Correct.

10 Q. Take a look at 15G.

11 A. Yes.

12 Q. I think you testified this is the exit photo of the same
13 location?

14 A. Yes, this is the exit photo.

15 Q. Do you see the trash bag there?

16 A. Yes, I do.

17 Q. Does that mean it was taken or left?

18 A. It was left.

19 Q. I've marked this Redweld as Government's 22A. I want to
20 show you this. Just take a second and orient yourself.

21 THE COURT: Agent, do you recall what was in the trash
22 bag that was left?

23 THE WITNESS: These are the documents --

24 THE COURT: Before you turn to his question, do you
25 recall what was in the trash bag that was left?

H1NMWEY7

Komar - redirect

1 THE WITNESS: I don't recall what was in that trash
2 bag. I just know that it was searched, your Honor.

3 THE COURT: Was it similarly opened and put on the
4 floor like the other trash bag?

5 THE WITNESS: I can't recall if they emptied that
6 trash bag or not. I do recall going through as normal practice
7 of myself to ask if things were searched, and I think I would
8 have asked that question if that would have been searched.

9 Q. What are the documents contained in this Redweld?

10 THE COURT: Just remind me what we are looking at now.

11 MR. FERRARA: I am showing the agent what I've marked
12 as Government 22A. I was just asking what is in this Redweld.

13 MR. SIEGAL: Sorry. This is a bit of confusion that I
14 had earlier, your Honor. The AUSAs have represented that those
15 folders were also associated with the things that were in the
16 suitcase. I don't know that he has testified to that yet.

17 THE COURT: He is asking him.

18 MR. FERRARA: That's exactly what I'm asking him, your
19 Honor.

20 THE COURT: We have discussed them or we have
21 discussed some documents that came from the suitcase before. I
22 don't know if these are the same or not, but they have been
23 marked now for identification as 22A. We will find out.

24 Q. What is 22A, Agent Komar?

25 A. These are -- I guess you could describe them as manila

H1NMWEY7

Komar - redirect

1 envelopes that are the paper that was ripped up that was found
2 in the white trash bag inside the suitcase. This is after I
3 had gone through in my office and tried, attempted to piece
4 these together to identify information on it or try and piece
5 it together to where we could review it, as well as if it was
6 in a foreign language, try and figure out what language and try
7 to get it translated.

8 Q. Let's just use --

9 MR. FERRARA: Your Honor, the government offers 22A as
10 part of 22.

11 THE COURT: For my clarification, Mr. Ferrara, do you
12 know and can you represent, is this different than the
13 documents we were looking at in 22 before?

14 MR. FERRARA: I can represent that, yes, but I also
15 have not asked the agent. I was going to ask the agent a
16 couple of questions about that as well, your Honor.

17 THE COURT: Go ahead.

18 I presume no objection.

19 MR. SIEGAL: No objection, your Honor.

20 THE COURT: 22A is admitted.

21 (Government Exhibit 22A received in evidence)

22 Q. I want to understand what was original stuff that you found
23 versus what was your work product after. These are in folders,
24 as you said.

25 A. Yes.

H1NMWEY7

Komar - redirect

1 Q. If you wouldn't mind showing the Court. You have notes on
2 the outside of that envelope, is that correct?

3 A. That's correct.

4 Q. Those are your notes that you took during your review?

5 A. Yes.

6 Q. Let's just show the Court an example of the originals of
7 what it was you were piecing back together.

8 A. One second.

9 Q. Again, just to be clear, were the manila folders in the
10 trash?

11 A. These manila folders were not in the trash. They are just
12 used to organize. My work product, basically.

13 Q. Earlier Mr. Siegal showed you some documents that he took
14 out of this black suitcase in front of you, Government's 22?

15 A. Yes.

16 Q. Is 22A additional documents found in Government's 22?

17 A. Yes, these are additional documents.

18 MR. FERRARA: I have nothing further, your Honor.

19 THE COURT: But they were also found in the trash bag
20 contained in Government 22?

21 THE WITNESS: Yes.

22 Q. All of the ones that Mr. Siegal showed you and the ones I
23 have now showed you, 22A, were all in the trash bag which was
24 in the suitcase which was in the closet?

25 A. Correct.

H1NMWEY7

Komar - recross

1 MR. FERRARA: Nothing further.

2 MR. SIEGAL: I just have a few questions about these
3 set of documents, your Honor.

4 RECROSS EXAMINATION

5 BY MR. SIEGAL:

6 Q. You're saying those documents as well as the documents in
7 those loose envelopes are in this suitcase over here. That was
8 all part of 1B24?

9 A. It was all inside the white trash bag, yes.

10 Q. At some point in 2012 you were tasked to make photocopies
11 for Mr. Wey and NYGG of the hard-copy documents that were
12 seized at both locations, right?

13 A. I believe so, yes.

14 Q. So it would have been your job to do the laborious task of
15 taking every one of these pieces of paper and photocopying them
16 or scanning them for purposes of putting it on a disk to give
17 to Mr. Wey?

18 A. Correct.

19 Q. Did you photocopy or scan everything in 1B24 at a time?

20 THE COURT: What are you referring to? I'm missing
21 the 1B24 reference.

22 MR. SIEGAL: Exhibit 22, your Honor, the suitcase and
23 the tag on it. I'm sorry. This was confusing. That has a
24 control number that ends in 1B24.

25 Q. Do you see that, sir?

H1NMWEY7

Komar - recross

1 A. I can't see from here. 1B is a term that we use with a lot
2 of evidence.

3 Q. Is it fair to say that each of the boxes of evidence over
4 there have a control number that begins 1B and then the numbers
5 are 1 through some other number beyond that?

6 A. That's correct.

7 Q. Did you make a conscious decision not to photocopy for
8 Mr. and Mrs. Wey the documents that were supposedly found
9 inside the suitcase?

10 A. No. To my best recollection, these were copied and
11 provided to counsel, to AUSA Massey, to provide.

12 Q. You would be surprised if in fact the disk of scans of the
13 hard-copy items was missing copies --

14 A. The disk would not contain these documents because it was
15 produced by -- scanned by our resources in Quantico and were
16 able to send a large amount of paper to be done. These were
17 copies, however, and provided to AUSA Massey.

18 Q. When?

19 A. I don't know. But during the course of the investigation.
20 This is something that he wanted to see and I provided these to
21 him.

22 Q. So your testimony is, as far as you understood, copies of
23 everything in that suitcase were supposed to be returned to
24 Mr. Wey?

25 A. I'm deciphering between return to Mr. Wey and provided to

H1NMWEY7

Komar - redirect

1 AUSA Massey. I provided them to AUSA Massey to evaluate what
2 needed to be done with that, whether they were considered
3 discovery or not. I was not privy to that decision.

4 Q. So you would be surprised to find that no copies of the
5 documents that were supposedly found within the trash were
6 provided to Mr. Wey back in 2012?

7 A. Yeah. My best understanding was I provided copies of these
8 documents.

9 Q. Would you be surprised to learn that no copies were
10 produced to the defense in this case after indictment?

11 MR. FERRARA: Objection.

12 THE COURT: Sustained.

13 Q. You don't know either way?

14 A. I have no idea.

15 MR. FERRARA: Your Honor, may I have redirect for one
16 more question. I apologize.

17 THE COURT: Hurry up.

18 REDIRECT EXAMINATION

19 BY MR. FERRARA:

20 Q. Agent Komar, regarding the search terms you ran in order to
21 search the electronic records, were your search terms limited
22 to what you believed you were entitled to seize under the
23 warrant?

24 A. Yes.

25 MR. FERRARA: Nothing further, your Honor.

H1NMWEY7

1 MR. SIEGAL: Done.

2 THE COURT: Thank you, Agent Komar. You are excused.

3 (Witness excused)

4 THE COURT: It's 5:13. As I've said, I have a hard
5 stop at 5:15.

6 Couple of housekeeping. Obviously, for tomorrow
7 everybody is going to come prepared with premarked exhibits. I
8 will ask at the end of the hearing ultimately what counsel will
9 do is put together an agreed-upon binder of what the admitted
10 exhibits are so they can have them in one place. And I'll ask
11 if you could work through some agreement on whether, for
12 example, the suitcase could be substituted for a photograph, I
13 presume, and how you want to handle the documents internal to
14 that that have been admitted for purposes of ultimately a
15 useable record here. Just discuss it and come to an agreement.
16 But at the end of the hearing tomorrow I will ask you to put
17 together for the Court an agreed-upon binder of admitted
18 exhibits.

19 MR. FERRARA: Does your Honor want argument tomorrow
20 at the end of the hearing or were you going to ask for
21 written --

22 THE COURT: What I think would be most useful is to do
23 a written submission and then bring you in for argument.
24 Written submission that's tied to the evidentiary record in the
25 case, and then after I have received that I'll bring you in for

H1NMWEY7

1 argument. But it's going to be a short time frame. I think
2 that would be most useful. I'm open, depending what time we
3 end tomorrow, some brief summation in advance of that. But I'm
4 going to want a written submission and I tend to think argument
5 afterwards is I think what's most useful.

6 MR. FERRARA: If your Honor wants written submissions
7 with arguments, then the government would not ask for argument
8 directly after the close of tomorrow's proceeding.

9 MR. SIEGAL: That's fine with us, your Honor. We
10 would like some time to digest the record as well.

11 THE COURT: In addition, I will ask for a proposal on
12 a schedule for submission. Again, for this to be fresh and
13 useful and given the overall time frame of the case, it's going
14 to be very short amount of time to put in a brief written
15 submission. See if you can come to an agreement on that.

16 Anything else to address?

17 MR. FERRARA: Not from the government.

18 THE COURT: Are we concerned about time? I think, for
19 example, we could start at 9:30 tomorrow.

20 MR. SIEGAL: Your Honor, I don't think we are going to
21 have a concern about the time. I think 10:00 would be fine.

22 THE COURT: OK.

23 MR. SIEGAL: In terms of the briefing, your Honor, is
24 your Honor going to want simultaneous briefs from both sides or
25 are you going to want a brief from us in terms of agreeing to a

H1NMWEY7

1 schedule?

2 THE COURT: I am going to think about it. Probably
3 not simultaneous. I think we will stagger. Again, very short.
4 Why don't you see if you can come to an agreement. My
5 inclination is to get briefs that respond to each other.

6 MR. SIEGAL: Just in terms of housekeeping in the
7 literal sense, your Honor, we brought a bunch of boxes of
8 materials here. Is it all right if we leave them in the
9 courtroom overnight?

10 THE COURT: Yes. Work it through with Ms. Nunez.
11 Anything else?

12 MR. FERRARA: Nothing. Thank you.

13 THE COURT: We are adjourned for the night.

14 (Adjourned to January 24, 2017, at 10:00 a.m.)
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17
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19
20
21
22
23
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25

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

DAVID MASSEY

Direct By Mr. Ferrara	6
---------------------------------	---

Cross By Mr. Siegal	30
-------------------------------	----

Redirect By Mr. Ferrari	106
-----------------------------------	-----

Cross By Mr. Siegal	112
-------------------------------	-----

MATTHEW KOMAR

Direct By Mr. Ferrara	121
---------------------------------	-----

Redirect By Mr. Ferrara	213
-----------------------------------	-----

Recross By Mr. Siegal	221
---------------------------------	-----

Redirect By Mr. Ferrara	223
-----------------------------------	-----

GOVERNMENT EXHIBITS

Exhibit No.	Received
-------------	----------

2 and 3	8
-------------------	---

9 and 10	19
--------------------	----

17 and 18	25
---------------------	----

19	28
--------------	----

21	112
--------------	-----

1	124
-------------	-----

4, 5, and 8	131
-----------------------	-----

11, 12, and 15	140
--------------------------	-----

20	147
--------------	-----

22	160
--------------	-----

Seven	178
-----------------	-----

1 6 and 13 215

2 22A 219

3 DEFENDANT EXHIBITS

4 Exhibit No. Received

5 483

6 590

7 Six92

8 Seven97

9 Eight 100

10 10 113

11

12

13

14

15

16

17

18

19

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21

22

23

24

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